United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT
AND
JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

F 053

No. 21,211

GEORGE PAPUCHIS, *et al.*,

Appellants,

v.

THE HONORABLE JOHN BRESNAHAN,
Referee in Bankruptcy, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

KARL G. FEISSNER
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737-3740

QUESTIONS PRESENTED

The questions presented in this appeal are:

1. Whether the United States District Court for the District of Columbia erred in denying a stockholder, of an alleged bankrupt corporation leave to intervene in pending bankruptcy proceedings.

2. Whether the United States District Court for the District of Columbia erred in denying additional creditors leave to intervene in a pending bankruptcy proceeding.

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is based upon 28 U.S. Code, Sec. 1291.

STATEMENT OF THE CASE

Proceedings were filed in the United States District Court for the District of Columbia, Bankruptcy, by three creditors of J & P Distributors, Inc., which proceedings sought to have the said J & P Distributors, Inc. declared bankrupt. The Appellants filed with the Referee in Bankruptcy their Motion to Intervene (App. 2), together with memorandum in support and exhibits attached thereto (App. 3-16). The memorandum in support of the Motion to Intervene stated that the moving parties (Appellants herein) were stockholders, former stockholders, or officers, former officers, former employees, and creditors of the corporation and one John Nevros who Appellants alleged was the alter ego of J & P Distributors, Inc., the alleged bankrupt. Both the creditors and the alleged bankrupt opposed the Motion of Appellants to Intervene in those proceedings (App. 19, 20). After hearing, the Referee in Bankruptcy entered an Order on January 12, 1967 (App. 26) denying the Motion to Intervene on the ground that the Appellants had "failed to establish a basis in law or in fact to support the said Motion to Intervene." (App. 27) Appellants petitioned for review of the Order of the Referee, and on June 16, 1967, the United States District Court for the District of Columbia entered an Order affirming the Order of the Referee (App. 31), from which this appeal is taken.

STATUTES INVOLVED

28 U.S.C., Section 1291.

Section 1291. Final decisions of district courts.

> "The Courts of Appeals shall have jurisdiction of appeals from all final decisions of the District Courts of the United States, the United States

District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

11 U.S.C., Section 95(f).

Section 95. Who may file and dismiss petitions.

"(f) Creditors other than the original petitioners may at any time enter their appearance and join in the petition."

11 U.S.C., Section 607.

Section 607. Intervention of parties; notices generally.

"The judge may for cause shown permit a party in interest to intervene generally or with respect to any specified matter. Except where otherwise provided in this chapter, the judge may from time to time enter orders designating the matters in respect to which, the persons to whom, and the form and manner in which notice shall be given."

STATEMENT OF POINTS

1. Under the facts presented in the proceedings below, the Referee in Bankruptcy should have granted leave for a stockholder of an alleged bankrupt to intervene in pending bankruptcy proceedings.

2. Under the facts presented in the proceedings below, the Referee in Bankruptcy should have granted leave to additional creditors to intervene in a pending bankruptcy proceeding.

SUMMARY OF ARGUMENT

The United States District Court for the District of Columbia erred in affirming the Order of the Referee denying the stockholder Appellants' Motion to Intervene, inasmuch as said intervention is authorized, upon a showing of cause, under the provisions of the Bankruptcy Act and other laws of the United States.

Additional error occurred when the United States District Court for the District of Columbia affirmed the Order of the Referee denying Appellant-creditors leave to intervene in the bankruptcy proceedings below, inasmuch as such intervention is a matter of right under the Bankruptcy Act and other laws of the United States.

ARGUMENT

The trial court and the Honorable Referee in Bankruptcy erred in denying a stockholder, and additional creditors of an alleged bankrupt corporation, leave to intervene in pending bankruptcy proceedings.

The basis of this appeal is the action of the United States District Court for the District of Columbia in affirming the Order of the Referee, denying your Appellants leave to intervene in a pending bankruptcy proceeding. Your Appellants, at the time their Motion to Intervene was filed, stood in the positions of stockholders and former stockholders, former officers, and current creditors of the alleged bankrupt. Appellants set forth the claim that the alleged bankrupt was, in fact, the alter ego of its controlling influence, one John Nevros. By their Motion, and exhibits attached thereto, Appellants proffered that their entrance into the proceedings, as parties, would protect the corporation, and themselves, by showing that "Mr. Nevros willfully and fraudulently schemed and manipulated the operation of J & P Distributors,

Inc., in such a manner as to wrongfully rape the corporation of virtually all its assets for his own personal gain." (App. 3) Such a proffer demonstrated that an adjudication of bankruptcy would work a wrongful result, and would adversely affect the interests of themselves and the corporation.

Appellants' position before the Referee, and the District Court, was adequately supported by law, and the denial of their Motion was prejudicial error. Rule 24a of the Federal Rules of Civil Procedure provides for intervention, *as a matter of right*, "(1) when a statute of the United States confers an unconditional right to intervene. . ." This Rule is to be liberally construed. *Knapp v. Hankins*, 106 F. Supp. 43 (D. C. Ill. 1952).

The statute authorizing such intervention is found at 11 U.S.C. §95(f), which states that "[c]reditors other than the original petitioners may at any time enter their appearance and join in the petition." Appellants contend that this authorizes their intervention under Rule 24a(1), F.R.C.P. This basis is found in the statement that ". . . the Act [11 U.S.C. §95(f)] provides that they may intervene at any time [and therefore], the right to do so is *not* limited by the court's discretion; *it is a matter of right*." *In Re Accord Ventilating Company*, 221 F.2d 899, 901 (7th Cir. 1955) [Emphasis added]. Further authority in support of this contention may be found in *Syracuse Engineering Co. v. Haight*, 110 F.2d 468 (2d Cir. 1940), and *Providence Box & Lumber Co. v. Goodrich-Daniell Lumber Corp.*, 80 F. Supp. 61 (D. C. Vt. 1948), both holding that intervention is a matter of right.

As to appellants' contention that they should have been granted leave to intervene in their status as stockholders, reliance is based upon 11 U.S.C. §607, which states that the ". . . judge may for cause shown permit a party in interest to intervene generally or with respect to any specified matter." While this section, unlike section 95(f), is

admittedly discretionary, Appellants contend that in view of the allegations presented in their Motion to Intervene, the court's denial of said Motion was an abuse of judicial discretion, and should be remedied by this Court. This is particularly true when one considers that Appellants are in the position of being the *only* stockholders of the corporation other than the alleged alter ego thereof, John Nevros.

CONCLUSION

In view of the foregoing, and for such other reasons as may be heard, Appellants move the Court to reverse the action of the United States District Court for the District of Columbia, and the action of the Honorable Referee, and to issue its mandate directing that your Appellants be granted leave to intervene in the bankruptcy proceedings, and that this intervention relate back to the filing of the original petition, without prejudice to the rights of the Appellants resulting from any action of the Referee subsequent to the filing of the Motion to Intervene.

Respectfully submitted,

KARL G. FEISSNER
WILLIAM L. KAPLAN
ALPERN & FEISSNER
1420 K Street, N. W.
Washington, D. C. 20005
Attorneys for Appellants

Of Counsel:
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Washington, D. C. 20005
737-3740

JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Bankruptcy Court

FILE DATE
JANUARY 23, 1967

In the Matter of:)
J & P DISTRIBUTORS, INC.) Bankruptcy No. 67-66
Alleged Bankrupt)

* * *

RELEVANT DOCKET ENTRIES

* * *

Date	Proceedings
1967	
Jan. 23	Motion of George Papuchis, et al. to Intervene, Memo, Exhibits; c/m 12/15/66.
Jan. 23	Opposition of creditors to Motion to Intervene; c/m 12/22/66.
Jan. 23	Motion of Alleged Bankrupt to dismiss Motion to Intervene, P & A; c/m 12/22/66.
Jan. 23	Order of Referee denying Motion to Intervene.
Feb. 17	Petition of Intervenors for Order of Review; c/m 1/18/67.
Feb. 17	Certificate of Referee on Petition for Review; c/m 2/16/67.
June 16	Order Affirming Order of Referee denying the Motion of George Papuchis, et al., McGarraghy, J.
June 29	Notice of Appeal of George Papuchis, et al., of Order of June 16, 1967. Deposit by Feissner $5.00. Copies mailed to: Roger Whalen, John Bresnahan, Referee, and John A. Kendrick.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Bankruptcy Court

FILE DATE
JANUARY 23, 1967

In the Matter of:	)	
J & P DISTRIBUTORS, INC.,	)	Bankruptcy No. 67-66
Alleged Bankrupt	)	

MOTION TO INTERVENE

Come now George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz, hereinafter denominated as movants or intervenors, by and through their counsel, Karl G. Feissner, and in accordance with their Memorandum of Points and Authorities which is attached hereto and incorporated herein by reference, move the Court for leave to intervene in the above-captioned matter.

/s/ Karl G. Feissner
Attorney for Intervenors

Of Counsel:
ALPERN & FEISSNER
1420 K Street, N.W.
Washington, D. C. 20005
RE 7-3740

[Filed January 23, 1967]

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Come now the movants, by and through counsel, Karl G. Feissner, in support of their foregoing Motion, and in accordance with Rule 24 of the Federal Rules of Civil Procedure state as follows:

The movants are plaintiffs in four (4) separate and distinct actions against J & P Distributors, Inc., or John Nevros, the alter ego of J & P Distributors, Inc., or both, copies of which are attached hereto and incorporated herein by reference. Two (2) of these actions are now pending in the United States District Court for the District of Maryland, and two (2) are now pending before the Circuit Court for Montgomery County in Rockville, Maryland. The claims presented in these actions, many of which are interrelated, allege, in essence, that J & P Distributors, Inc. is but a tool for the fraudulent manipulations of John Nevros.

Movants, if they are granted leave to intervene in this matter, are confident that they can demonstrate to the satisfaction of the Court that Mr. Nevros willfully and fraudulently schemed and manipulated the operation of J & P Distributors, Inc., in such a manner as to wrongfully rape the corporation of virtually all of its assets for his own personal gain.

The movants are stockholders, former stockholders, officers, former officers and former employees of J & P Distributors, Inc., as well as being creditors of the corporation and creditors of Mr. Nevros. In these various capacities, your movants contend that they are allowed to intervene as a matter of right in accordance with the provisions of Rule 24 (a) (3) of the Federal Rules of Civil Procedure, inasmuch as their rights and claims will be adversely affected by a distribution or other disposition of the assets of J & P Distributors, Inc., if said corporation is, in fact, adjudicated bankrupt. As further support of this contention, movants cite the cases of Clark v. Sandusky, 205 F.2d 915 (7th Cir., 1953); Dowdy v. Hawfield, 88 U.S. App. D. C., 241, 189 F.2d 637 (1951), cert. denied 342 U.S. 830, 72 S. Ct. 54; and Northern Insurance Company of New York v. Grone, 126 F. Supp. 457 (D. C.

Pa., 1954), which cases hold that even though a petitioner may be able to assert rights in a separate action, leave to intervene will be granted where the one seeking intervention has an interest in the subject matter of such a nature that he will gain or lose by the operation of a judgment.

As further indication of the fact that J & P Distributors, Inc., is but the alter ego of John Nevros, your intervenors cite to the attention of the Court the fact that there are now pending in local Courts of Fairfax, Alexandria and Arlington, Virginia, over twelve (12) cases in which the plaintiff is Mary B. Nevros who is the wife of the said John Nevros. It should further be noted, for the attention of the Court, that the legal description of Mary B. Nevros in each of these cases is "Assignee of J & P Distributors, Inc.", and that twelve (12) of these cases are scheduled to proceed to judgment on the 19th, 20th and 21st of December, 1966.

In view of the foregoing Motion, Memorandum and exhibits attached thereto, and for such other reasons as may be heard, movants pray the Court for leave to intervene in this matter so that they may adequately protect their rights and claims.

Respectfully submitted,

/s/ Karl G. Feissner
Attorney for Intervenors

Of Counsel:
ALPERN & FEISSNER
1420 K Street, N. W.
Washington, D. C. 20005
RE 7-3740

[Certificate of Service]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore, Maryland

FILE DATE
JANUARY 23, 1967

GEORGE VAROUTSOS
2617 Wisconsin Avenue N. W.
Washington, D. C., and

JENNIE VAROUTSOS
2617 Wisconsin Avenue N. W.
Washington, D. C., and

LOUIS PAPPAS
6004 Columbia Pike
Falls Church, Virginia, and

JAN PAPPAS
6004 Columbia Pike
Falls Church, Virginia, and

WACLAW GILEWICZ
3850 Tunlaw Road N. W.
Washington, D. C., and

HANNA MARIE GILEWICZ
3850 Tunlaw Road N. W.
Washington, D.C.

Plaintiffs,

v.

JOHN NEVROS
1910 Franwall Avenue
Silver Spring, Maryland

Defendant.

CIVIL ACTION NO. 17794

COMPLAINT
(Breach of Contract)

1. This Court has jurisdiction by virtue of the fact that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs and diversity of citizenship.

2. The male plaintiffs were officers and stockholders of a corporation known as J & P Distributors, Inc., which corporation was duly organized in the State of Delaware and doing business in the District of Columbia at 2711 - 26th Street N.E.

3. During the time that male plaintiffs were officers of the above referred to corporation, they and the female plaintiffs signed as endorsers a bank note payable to the Arlington Trust Company, Incorporated, located in Arlington, Virginia.

4. On or about, to wit, March 1966, the male plaintiffs and the defendant entered into negotiations whereby the Defendant was to purchase from the male plaintiffs the stock and all other incidents of ownership of the corporation known as J & P Distributors, Inc.

5. During these negotiations and as one of the conditions of the sale of the corporation, the Defendant agreed with the plaintiffs to assume all debts of the corporation in which there was personal liability, including, but not limited to, the note referred to above in favor of the Arlington Trust Company.

6. On or about, to wit, April 1966, negotiations for the sale of stock and other incidents of ownership in the corporation were completed, at which time the defendant again agreed to assume all corporate debts in which there was any personal liability, including, but not limited to, the above referred to note.

7. Subsequent to the transfer of the corporation to the Defendant, the defendant made repeated promises to assume all liability on the above mentioned note, and all other corporate liabilities for which there was also personal liability.

8. Notwithstanding the many promises of the defendant, he has failed and refused to pay any amounts due on said note.

9. The amount due on said note presently is Ten Thousand Nine

Hundred Twenty-three Dollars and Fifty-three Cents ($10,923.53), plus interest and attorney's Fees.

WHEREFORE, plaintiffs claim judgment against the Defendant in the amount of Ten Thousand Nine Hundred Twenty-three Dollars and Fifty-three Cents ($10,923.53), plus interest thereon from April 4, 1966, costs, attorney's fees, and such other and further relief as the nature of the case may require, and which to the Court shall seem just and proper.

/s/ Karl G. Feissner
Attorney for Plaintiff

Of Counsel:
ALPERN & FEISSNER
11125 Rockville Pike
Rockville, Maryland
942-8200

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND
Rockville, Maryland

FILE DATE
DECEMBER 2, 1966

PERRY VAROUTSOS
11215 Gainsborough Road
Potomac, Maryland

and

EVELYN VAROUTSOS
11215 Gainborough Road
Potomac, Maryland

Plaintiffs,

vs.

JOHN NEVROS
Service of Process Upon:
Paul Q. Cuddy, Esq.
10400 Connecticut Avenue
Kensington, Maryland
Who Is Authorized to Accept
Such Service

Defendant.

LAW NO. 20477

DECLARATION
(Breach of Contract)

Come now the plaintiffs, by and through their attorney, Karl G. Feissner, and sue the defendant for that prior to March, 1966, the male plaintiff was an officer and stockholder of a corporation known as J & P Distributors, Inc., which corporation was duly organized in the State of Delaware and doing business in the District of Columbia at 2711 26th Street, N.E. During the time that the male plaintiff was an officer of the above-referred to corporation, he and the female plaintiff signed, as endorsers, a bank note payable to the Arlington Trust Company, Incorporated, located in Arlington, Virginia.

On or about, to wit, March, 1966, the male plaintiff and the defendant entered into negotiations whereby the defendant was to purchase from the male plaintiff the stock and all other incidents of ownership of the corporation known as J & P Distributors, Inc. During these negotiations, and as one of the conditions of the sale of the corporation, the defendant agreed with the plaintiffs to assume all debts of the corporation in which there was personal liability, including, but not limited to, the note referred to above in favor of the Arlington Trust Company.

On or about, to wit, April, 1966, negotiations for the sale of stock and other incidents of ownership in the corporation were completed, at which time the defendant again agreed to assume all corporate debts in which there was any personal liability, including, but not limited to, the above-referred to note. Subsequent to the transfer of the corporation to the defendant, the defendant made repeated promises to assume all liability on the above-mentioned note, and all other corporate liabilities for which there was also personal liability. Notwithstanding the many promises of the defendant, he has failed and refused to pay any amounts due on said note. The amount due on said note presently is Ten-Thousand Nine-Hundred Twenty-Three Dollars and Fifty-Three Cents ($10,923.53), plus interest and attorney's fees.

WHEREFORE, plaintiffs claim judgment against the defendant in the amount of Ten-Thousand Nine-Hundred Twenty-Three Dollars and Fifty-Three Cents ($10,923.53), plus interest thereon from April 4, 1966, costs, attorney's fees, and such other and further relief as the nature of the case may require and which to the Court shall seem just and proper.

/s/ Karl G. Feissner
Attorney for Plaintiffs

of Counsel:
ALPERN & FEISSNER
11125 Rockville Pike
Rockville, Maryland
942-8200

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore, Maryland

FILE DATE
NOVEMBER, 1966

LOUIS PAPPAS, Individually
and as Minority Shareholder
6004 Columbia Pike
Falls Church, Virginia

Plaintiff,

v.

JOHN NEVROS, Individually
and as Agent for
J & P DISTRIBUTORS, INC.
1910 Franwall Avenue
Silver Spring, Maryland

Defendants.

CIVIL ACTION NO. 17808

COMPLAINT

(Misrepresentation, Breach of Fiduciary Obligation, Injunction, Assault and Battery, etc.)

COUNT I

1. This Court has jurisdiction in that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, and diversity of citizenship.

2. Plaintiff is a fifteen percent (15%) shareholder in J & P Distributors, Inc. Defendant, John Nevros, is an eighty-five (85%) percent shareholder of the corporation and the President thereof.

3. The defendant corporation is a Delaware corporation whose principal place of business is located in Washington, D. C. and whose officers are at 2711 - 26th Street N. E.

4. Plaintiff was a fifteen percent (15%) shareholder at the time of all the incidents alleged in this complaint.

5. This action is not a collusive one in order to confer jurisdiction on the United States District Court of any action of which it would not otherwise have jurisdiction.

6. On or about August 18, 1966, plaintiff approached the President and eighty-five percent (85%) shareholder, John Nevros, and requested and accounting of the corporation's financial activities for the preceding four (4) months, and requested answers to numerous questions on the management and procedures of the corporation. The defendant, John Nevros, summarily refused to give any accounting or any answer to the questions. Further, he refused to take any action on behalf of the corporation to investigate alleged wrongdoings in connection with the corporation. Defendant Nevros gave his refusal to the plaintiff by striking him on the shoulder with a hammer and by threatening to kill him.

7. Plaintiff, in his capacity as a minority shareholder, seeks recovery on behalf of the corporation for numerous misdeeds on the part of the defendant John Nevros, to wit:

A. That defendant, John Nevros, has at all times since his acquisition of the controlling interest of said corporation operated said corporation entirely for his own personal profit and benefit without any regard whatsoever for the rights of any other shareholder.

B. That defendant, John Nevros, has operated the corporation as if it were entirely his own, and has failed to set up and elect a Board of Directors, has failed to call any shareholder meetings, has failed to account to any other interests in the corporation as to the transactions of the corporation.

C. That defendant Nevros has co-mingled the funds of the corporation with those of his own, has not kept adequate records of the transactions of the corporation, and has appropriated substantial

sum of money of the corporation to his own use.

D. That defendant Nevros has consistently sold the assets and the inventory of the corporation in bulk without the consent of any other interested parties of the corporation, and he has sold them at reduced prices and appropriated the proceeds to his own use.

E. That defendant, John Nevros, has prevented plaintiff from exercising his legal right of entry into the offices of the corporation by padlocking the entrances thereto.

F. That defendant, John Nevros, has flagrantly violated his fiduciary obligations to the corporation and its minority shareholder. He has continuously misused, mismanaged, squandered and appropriated substantial funds of the corporation, and has viciously and sometimes violently prevented any exercise of rights and privleges of the minority shareholder, Louis Pappas.

WHEREFORE, the plaintiff seeks to enjoin the exercise of any corporate powers on the part of the defendant, John Nevros, by appointing a receiver to handle the affairs of the corporation in the best interests of the corporation and all of its shareholders. Further, plaintiff demands recovery on behalf of the corporation in the amount of Seventy-Five Thousand Dollars ($75,000.00), the approximate amount of funds appropriated wrongfully from the corporation to the use of the defendant. Plaintiff also seeks reasonable allowance of counsel fees, costs, and any other just and equitable relief so which the Court deems him entitled.

COUNT II

1. This Court has jurisdiction in that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, and diversity of citizenship.

2. Defendant, John Nevros, is a resident of the State of Maryland and operates a business whose offices are located at 2711 - 26th Street N. E., Washington, D. C.

3. On or about March or April, 1966, defendant, John Nevros, bought an eighty-five percent (85%) interest in J & P Distributors, Inc. Up to that time, the plaintiff was a thirty percent (30%) shareholder and the sole and exclusive salesman for said corporation.

4. During and immediately following the time when defendant Nevros bought into the corporation, he continually made material and fradulent misrepresentations of existing facts and material and fraudulent misrepresentations of his existing state of mind to wit:

A. That he intended and would continue to pay plaintiff, Louis Pappas, a commission percentage that plaintiff has been earning up to that time.

B. That he intended to run the corporation for the benefit of all of its shareholders and employees.

C. That he intended to use the skills of plaintiff in furthering the success of the corporation.

D. That he would delegate managerial responsibility to said plaintiff by electing him to an officership and directorship of said corporation.

E. That he bought the said corporation as an investment in a successfully operating business.

5. Defendant, at the time he made the above statements, had no intention whatsoever to operate the corporation for the benefit of the corporation and its shareholders, but, instead, planned to appropriate the proceeds of the corporation for his own use. Defendant knew, at the time of the above statements, that the high liquidity and high cash flow of the corporation could be easily appropriated to his own use.

6. Defendant knew, at the time of the above statements, that he would not continue to pay any commission to plaintiff, that he would not delegate any managerial responsibility to plaintiff, and would not, in any way, allow plaintiff to examine the books of account.

7. Defendant, at the time of the representations above, intended to make plaintiff believe that he had a good and secure future with the corporation, and defendant intended plaintiff to rely on such respresentations. Defendant induced this reliance in order to have the advantages of the skills of plaintiff until such time as he had appropriated the funds of the corporation to his own use.

8. Plaintiff, in reliance on the representations above, remained in the employ of the corporation and retained a fifteen percent (15%) shareholder interest in the corporation.

9. Plaintiff has suffered damages because of the misrepresentations of the defendant in that he has been deprived of his weekly commissions for a period of four (4) months, has suffered substantial depreciation in the value of his stock, and has been deprived of any other opportunties to seek to employ his skills elsewhere.

WHEREFORE, plaintiff seeks judgment for such damages in the sum of Seventy-Five Thousand Dollars ($75,000.00), and punitive damages in the amount of Seventy-five Thousand Dollars ($75,000.00) as well as a reasonable allowance for counsel fees, costs, and any other just and equitable relief to which the Court deems him entitled.

COUNT III

1. This Court has jurisdiction in that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00) exclusive of interest and costs.

2. On or about August 18, 1966, defendant, John Nevros, while in a discussion with plaintiff on the practices of J & P Distributors, Inc., viciously, wantonly, maliciously and intentionally struck said plaintiff on the shoulder with a hammer and threatened to kill him. Defendant believed that the resulting blow to the plaintiff would be certain to follow from his act.

3. Plaintiff had not consented to any physical contact, whatsoever, with the defendant and, in fact, was surprised and alarmed at the reckless and malicious act of the defendant.

4. Plaintiff was physically injured by the defendant's act and suffered considerable apprehension and alarm by the threats to plaintiff's life.

WHEREFORE, plaintiff seeks judgment for said assault and battery in the amount of Ten Thousand Dollars ($10,000.00) compensation for injuries sustained from the physical injury, Ten Thousand Dollars ($10,000.00) compensation for the severe mental anguish and suffering caused by the defendant's striking as well as defendant's threats to plaintiff's life, and Ten Thousand Dollars ($10,000.00) punitive damages, together with reasonable counsel fees, costs, and any other just and equitable relief to which the Court deems him entitled.

/s/ Karl G. Feissner
Attorney for Plaintiffs

Of Counsel:
ALPERN & FEISSNER
1420 K St. N. W.
Washington, D. C. 20005
RE 7-3740

JURY DEMAND

Plaintiff demands Trial By Jury on all issues.

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND
ROCKVILLE, MARYLAND

FILE DATE
DECEMBER 13, 1966

GEORGE PAPUCHIS
10312 Conover Drive
Silver Spring, Maryland,
Plaintiff,

v.

JOHN NEVROS
Service of Process Upon:
Paul Q. Cuddy, Esquired,
10400 Connecticut Avenue
Kensington, Maryland
Defendant.

LAW NO. 20528

DECLARATION
(Fraud, Breach of Contract)

COUNT I

The Plaintiff, George Papuchis, through his attorney, Karl G. Feissner, sues the Defendant, John Nevros, for that, on or about, to wit, March 1966, the Defendant entered into negotiations with the Plaintiff with a view toward their joint management of a corporation to be acquired by the Defendant. During and prior to these negotiations, the Plaintiff was a professional business man carrying on a lucrative practice in the District of Columbia as a public accountant. The Defendant contracted with the Plaintiff to have the Plaintiff relinquish his private business and enter into a partnership with the defendant in the control of a corporation that the Defendant was presently negotiating to acquire. In return for Plaintiff's services, Defendant contracted to pay him a salary, to share in the profits of the corporation, and to convey to the Plaintiff Forty-Two and One-Half Percent (42-1/2%)

of the stock of the corporation which was to be acquired. That the representations and agreements of the Defendant were fraudulent in that the Defendant knew that they were false and knew at the time that he made them that he had no intention to fulfill his agreement; and that, on or about, to wit, the 30th day of April, 1966, the Plaintiff was discharged by the Defendant, and at no time was Plaintiff allowed to participate in any share of the profits of the newly acquired corporation. The Defendant's fraudulent misrepresentations have caused the Plaintiff severe damage, great mental and physical pain and suffering, and loss of income.

WHEREFORE, Plaintiff claims judgment against the Defendant in the sum of Seventy-Five Thousand Dollars ($75,000.00) compensatory damage, and Seventy-Five Thousand Dollars ($75,000.00) punitive damage, together with interest, costs and such other and further relief as the nature of the case may require, and which to the Court shall seem just and proper.

COUNT II

Incorporating by reference the pertinent allegations of Count I, the Plaintiff, George Papuchis, further alleges that the Defendant contracted with the Plaintiff to have the Plaintiff relinquish his private business and enter into a partnership with the Defendant in the control of a corporation which the Defendant was presently negotiating to acquire. In return for Plaintiff's services, Defendant contracted to pay him a salary, to share in the profits of the corporation, and to convey to the Plaintiff Forty-Two and One-Half Percent (42-1/2%) of the stock of the corporation which was to be acquired. The Plaintiff did, in fact, discontinue his own business as a public accountant and commenced work for the Defendant on or about, to wit, April 1966, and on or about, to wit, the 30th day of April 1966, the Defendant breached his contract with the Plaintiff by summarily discharging said Plaintiff, and, at no

time, did the Defendant convey any of the promised stock to the Plaintiff; and, at no time, was Plaintiff allowed to participate in any share of the profits of the newly acquired corporation. The Defendant's active breach of contract has caused the Plaintiff severe damage, great mental and physical pain and suffering, and loss of income.

WHEREFORE, Plaintiff claims judgment against the Defendant in the sum of Seventy-Five Thousand Dollars ($75,000.00) compensatory damage, and Seventy-Five Thousand Dollars ($75,000.00) punitive damage, together with interest, costs and such other further relief as the nature of the case may require, and which to this Court shall seem just and proper.

/s/ Karl G. Feissner
Attorney for Plaintiff

Of Counsel:
ALPERN & FESSINER
11125 Rockville Pike
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JURY DEMAND

Plaintiff demands trial by jury on all issues.

/s/ Karl G. Feissner
Attorney for Plaintiff

[Filed January 23, 1967]

OPPOSITION TO MOTION OF
GEORGE PAPUCHIS, ET AL TO INTERVENE

The petitioning creditors herein, Appollo Thermo Products, Inc., Robins Paper Co. and R. V. Golden & Co., by and through their attorneys below named, oppose the Motion to Intervene filed herein by George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz.

While it is true that Rule 24 (a) (3) of the Federal Rules of Civil Procedure applies in cases of intervention, this is merely procedural and does not control or govern the basic right of intervention. Since this is a proceeding under the Bankruptcy Act, authority for intervention must be provided therein. Insofar as the petitioning creditors herein have been able to determine, there is no such provision anywhere in the Bankruptcy Act.

Assuming but not conceding that the allegations set forth in the memorandum attached in support of the Motion to Intervene are true; nevertheless, intervention cannot and does not serve the intended purpose nor the apparent remedy being sought. If, in fact, assets of the alleged bankrupt have been improperly transferred to others, then this would be a matter for the Trustee when appointed to pursue by appropriate investigation and prosecution as may be indicated.

If Movants are creditors of the alleged bankrupt, then it would still not only be unnecessary but improper to permit intervention for there are presently three petitioning creditors which is the maximum number required under the provisions of the Bankruptcy Act in any bankruptcy case.

For the foregoing reasons, it is respectfully submitted that the Motion to Intervene should be dismissed.

/s/ Leon M. Shinberg
514 Washington Building
Washington, D. C. 20005

/s/ John A. Kendrick
233 Massachusetts Avenue, N.E.
Washington, D. C. 20002

Attorneys for Petitioners

[Certificate of Service]

[Filed January 23, 1967]

MOTION TO DISMISS MOTION TO INTERVENE

TO THE HONORABLE JOHN A. BRESNAHAN,
REFEREE IN BANKRUPTCY:

J & P DISTRIBUTORS, INC., the alleged bankrupt, by one of its counsel, Samuel M. Greenbaum, moves this court to dismiss the Motion to Intervene filed by George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz, and for grounds therefor respectfully represents:

1. This court lacks jurisdiction over the subject matter.

2. The Motion to Intervene fails to state a claim upon which can be granted.

3. The movants are not parties entitled to intervene in the above-captioned bankruptcy proceeding unless they are creditors, in which event said parties' participation in the proceeding would by filing a

formal proof of claim and not by Motion to Intervene.

4. The exhibits attached to the Motion to Intervene, consituting four Complaints filed by various of the movants, demonstrate that the claims of the movants are against John Nevros, an individual, or as agent for J & P Distributors, Inc., but show no claim asserted against J & P Distributors, Inc.

5. The said Motion to Intervene is not a proper or an appropriate pleading to be filed in the bankruptcy proceeding.

6. The said Motion to Intervene, if deemed a proper pleading, is anticipatory and not entitled to consideration in the present status of the proceeding.

7. The premise upon which said Motion to Intervene is based, as alleged in the Memorandum in Support of Motion to Intervene, appears essentially stated to be allegations that John Nevros, an individual, used the corporation for his own personal gain and to the detriment of creditors and others, and that the said corporation should be deemed the alter ego of John Nevros, which allegations, if substantiated, would constitute a cause of action by the Trustee in Bankruptcy in this proceeding, and not a cause of action inuring to the movants, and accordingly their motion is inappropriate and upon grounds which are not sustainable, nor would said grounds entitle intervenors to a right to intervene other than as creditors in the appropriate manner provided by the filing of a proof of claim in bankruptcy.

8. And for such other grounds as will be presented to this court at the time of the hearing upon the Motion to Intervene.

WHEREFORE, the premises considered, it is prayed that the Motion to Intervene filed herein be denied and dismissed with prejudice.

/s/ Samuel M. Greenbaum
Attorney for J & P
Distributors, Inc.

Samuel M. Greenbaum
Alan S. Kerxton

By /s/ Alan S. Kerxton
Attorney for J & P Distributors, Inc.
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289-9100

[Certificate of Service]

[Filed January 23, 1967]

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS MOTION TO INTERVENE

The Motion to Intervene filed by the parties named who seek to intervene should be denied and dismissed with prejudice for grounds set forth in the Motion to Dismiss said Motion to Intervene, for reasons that:

1. The Bankruptcy Act provides the manner in which those asserting to be creditors should present their claims. (57 Bankruptcy Act: 11 U.S.C. 93).

2. Creditors seeking to intervene as petitioning creditors may do so under the provisions of the Bankruptcy Act (§59 f: 11 U.S.C. §95 f). However, movants do not appear to allege their status as creditors, but allege their status as " . . . plaintiffs in four (4) separate and distinct actions against J & P Distributors, Inc., or John Nevros, the alter ego of J & P Distributors, Inc., or both. . .." Reference to the attached Complaints filed does not disclose that J & P Distributors, Inc., the bankrupt, was named a defendant in any action, and all actions appear to be against John Nevros individually or, in one instance, against him as agent for J & P Distributors, Inc.

3. The Trustee in Bankruptcy succeeds to the title of the bankrupt to all property transferred by the bankrupt in fraud of creditors (§70a (4): 11 U.S.C. 110a (4) and also succeeds to all rights of action which the bankrupt could by any means have asserted) §70a (5): 11 U.S.C. 110a (5)), and to rights of action arising upon the unlawful taking or detention or injury to the bankrupt property (§70a (6): 11 U.S.C. 110a (6)). Accordingly, if, as alleged in the Memorandum in Support of Motion to Intervene, John Nevros has conducted the affairs of the corporation in the manner alleged, such right of action on behalf of the creditors exists in the Trustee in Bankruptcy upon the filing of the bankruptcy petition, if it is a right of action inuring to the bankrupt corporation, under the Trustee's powers under the Bankruptcy Act. Otherwise, if such right is not a right of action inuring to the Trustee, but a right of individual action by the moving creditors against John Nevros, there is no basis for undertaking to intervene in the bankruptcy proceeding by said movants.

4. One of the duties of the Trustee in Bankruptcy is inter alia to collect and reduce to money the property of the estate (Bankruptcy Act §47a: 11 U.S.C. 75a). Accordingly, if, as asserted by movants, there exists a cause of action in the bankrupt estate against Nevros, in which the movants' rights and claims would be adversely affected, movants would appear to be asserting claims as creditors against the bankrupt

corporation which appears contrary to the causes of action as evidenced by the Complaints filed against John Nevros individually.

5. Movants' position, as it appears in the Memorandum in Support of Motion to Intervene, appears to be premised on allegations which, if substantiated, would constitute a cause of action by the Trustee in Bankruptcy in which movants have no greater right or benefit than other creditors in the recovery resulting therefrom, based on the actions of John Nevros individually in which it is alleged that he personally benefited by his conduct and schemed and manipulated the operations of the bankrupt for his personal gain. If on the contrary, however, as appears in the Complaints attached to the Motion to Intervene as exhibits, the causes of action therein asserted are personal to the plaintiffs in said causes, against John Nevros individually, and if, therefore, they do not constitute causes of action which may be asserted by the Trustee in Bankruptcy, then for either reason movants should not be granted leave to intervene; in the first instances because they have no independent status as parties in interest or creditors, since they do not assert status as creditors of the bankrupt corporation and since the cause of action which they assert is one inuring to the Trustee in Bankruptcy; in the second instance because the claims they assert are personal unto themselves and do not constitute causes of action assertable by the Trustee in Bankruptcy and consequently there was no basis for said movants' effort to intervene in the bankruptcy proceeding.

6. Movants' Motion for leave to intervene is an inappropriate and improper pleading in this proceeding, for that movants are neither creditors of the bankrupt corporation nor does any pleading submitted by them demonstrate their status of a creditor in said proceeding, but on the contrary they claim, as the four Complaints attached as exhibits to the Motion demonstrate, damages against John Nevros individually. If movants in such status are granted leave to intervene, or even if movants can demonstrate that they are either creditors or parties in interest, if

they are granted leave to intervene, every other creditor or party alleged to be in interest could likewise move to intervene, asserting individual claims arising out of individual and various transactions, constituting a multiplicity of pleadings and proceedings inimical to the purport and express intent and provisions of the Bankruptcy Act and contrary to law, resulting in a delay in administration and interfering with the orderly procedure established under the provisions of the Bankruptcy Act.

7. The Motion to Intervene is an appropriate motion procedurally according to the Federal Rules of Civil Procedure, but lacks a substantive basis in law for its allowance. Although the Federal Rules of Civil Procedure are applicable in bankruptcy unless inconsistent therewith (General Order 37), the present Motion is both procedurally and substantively inappropriate for the foregoing reasons.

8. This court, as a court of bankruptcy, lacks jurisdiction to grant the relief prayed for in the four Complaints attached as exhibits to the Motion to Intervene, inasmuch as the relief prayed for appears personal to the intervenors, asserted personally against John Nevros and not against the corporation. Even if the relief prayed for was against the corporation, assuming it were named a defendant in said actions, nevertheless the Motion to Intervene would be inappropriate, and again it is reiterated: to the extent the claims were properly asserted against the corporation then said claimants are relegated to the position of creditors whose claims must be asserted according to the provisions of §57 of the Bankruptcy Act by the filing of proof of claim.

For the foregoing reasons the Motion to Intervene fails to state a claim in this proceeding upon which relief can be granted.

Accordingly, for the foregoing reasons, and other reasons which will be presented at the time of hearing, the Motion to Intervene should be denied and dismissed with prejudice.

Respectfully submitted,

Samuel M. Greenbaum
Alan S. Kerxton
Attorneys for J & P Distributors, Inc.

By /s/ Samuel M. Greenbaum

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Alan S. Kerxton
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[Filed January 23, 1967]

ORDER DENYING MOTION TO INTERVENE

Upon consideration of the Motion to Intervene filed herein by George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz and of the Memorandum of Points and Authorities attached thereto, together with the exhibits referred to in said Memorandum and of the Opposition to said Motion filed herein by Apollo Thermo Products, Inc., Robins Paper Co. and R. V. Golden & Co., the petitioning Creditors, and of the Motion to Dismiss said Motion to Intervene filed herein by J & P Distributors, Inc., the alleged Bankrupt, together with the Points

and Authorities in Support of said Motion to Dismiss Motion to Intervene attached thereto, and upon further consideration of argument presented by counsel for all of the aforesaid parties in open Court at a hearing held on the 10th day of January 1967, and it appearing from all of the foregoing that Movants of the Motion to Intervene have failed to establish a basis in law or in fact to support the said Motion to Intervene; therefore, be it this 12th day of January 1967,

ORDERED that the aforesaid Motion to Intervene be and the same hereby is denied.

/s/ _____
REFEREE

I certify that I hand-delivered a copy of the foregoing Order to Karl G. Feissner this 11th day of January, 1967.

/s/ _____

[Filed February 17, 1967]

PETITION FOR REVIEW OF ORDER OF REFEREE

The proposed Intervenors in the Court below seek review in this Court of the action of the Referee in Bankruptcy in dismissing the proposed Intervenors' Motion to Dismiss the proposed Intervenors' Motion to Intervene. The Motion to Intervene, a copy of which is attached hereto and incorporated herein by reference contained allegations which show that some of the proposed Intervenors were creditors and one of the proposed Intervenors was a minority stockholder of the alleged bankrupt. It was further brought to the attention of the Referee in Bankruptcy that in fact the alleged bankrupt, J & P Distributors, Inc., may not be a corporation in existence at this time, and if it is, then it is the mere alter ego of an individual, John Nevros.

For these reasons, and in accordance with the Memorandum of Points and Authorities attached hereto and incorporated herein by reference, and for such other reasons that will be urged to the Court, the proposed Intervenors respectfully move this Court to overrule the Order of the Referee and to allow their intervention.

Respectfully submitted,

/s/
Karl G. Feissner, Attorney for Intervenors, George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz.

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MEMORANDUM OF POINTS AND AUTHORITIES

Title 11, U. S. Code Annotated, Sec. 607 (c); Title 11, U. S. Code Annotated, Sec. 95(f); Woods v. Deck, 112 F.2d 739 (9th Cir. 1940); McCune v. First National Trust & Savings, 109 F.2d 887 (9th Cir. 1940); Klein v. Nu-Way Shoe Co., 136 F.2d 986 (2nd Cir. 1943); Syracuse Engineering v. Haight, 110 F.2d 468 (2nd Cir. 1940); In Re Super Vent Window Co., 52 F. Supp. 356 (D. C. Fla. 1943); Rule 24(a)(3), Federal Rules of Civil Procedure.

1. Stockholders and minority shareholders should be entitled to participate in bankrupt proceedings where the effect of the proceedings may be to place their corporation into voluntary bankruptcy when it has been alleged that the corporation is, in fact, the alter ego of an individual, and has been manipulated by that individual so that the corporation, in fact, does not exist.

2. Purported consent of voluntary adjudication apparently entered into between the petitioning creditors and the corporation does not render moot an intervening petition by a minority stockholder.

3. The proposed intervening creditors' rights would be materially affected by a distribution or other disposition of the assets of J & P Distributors, Inc. if said corporation is in fact adjudged a bankrupt.

/s/ Karl G. Feissner

Of Counsel.
ALPERN & FEISSNER
1420 K Street, N. W.
Washington, D. C. 20005
RE 7-3740

[Certificate of Service]

[Filed February 17, 1967]

REFEREE'S CERTIFICATE ON PETITION FOR REVIEW

To the Honorable, the Judges of the United States District Court for the District of Columbia:

I, John A. Bresnahan, the Referee of said Court in Bankruptcy do hereby certify that the captioned case was referred to me on October 14, 1966 upon a Creditors' Petition to adjudge J & P Distributors, Inc., a bankrupt; that in the course of the proceedings in said cause before me, the following question arose pertinent to the said proceedings:

> Whether, prior to the hearing on the Creditors' Petition, George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz, should be permitted to intervene in this proceeding.

As set forth in my order dated January 12, 1967, I found that the Movants had failed to establish a basis in law or in fact to support their Motion to Intervene and denied the Motion.

(Note: On January 26, 1967, J & P Distributors, Inc., was adjudged a bankrupt.)

I do further certify.

1. Petition for Review of Order of Referee filed on January 18, 1967.
2. Order denying Motion to Intervene filed on January 12, 1967.
3. Motion to Dismiss Motion to Intervene filed by J & P Distributors, Inc., the alleged bankrupt on December 27, 1966.
4. Opposition to Motion of George Papuchis, et al to Intervene filed on December 22, 1966.
5. Motion to Intervene filed on December 19, 1966.

Dated: Washington, D. C., February 16, 1967.

Respectfully submitted,

/s/ John A. Bresnahan
Referee in Bankruptcy

[Filed June 16, 1967]

ORDER AFFIRMING ORDER OF REFEREE

Upon consideration of the Petition for Review of Order of Referee dated January 12, 1967, wherein the Motion to Intervene, filed by George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz was denied, and after hearing argument of counsel for petitioners in support thereof and counsel for J & P Distributors, Inc. and for the petitioning creditors in opposition thereto, and it appearing to the court that the Order of the Referee denying the Motion to Intervene is well established in fact and adequately supported in law: therefore, be it this 16th day of June 1967.

ORDERED that the aforementioned Order of the Referee denying the Motion of George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz to Intervene be and the same hereby is affirmed

/s/ McGarraghy, Judge

[Certificate of Service]

[Filed June 29, 1967]

NOTICE OF APPEAL

Notice is hereby given this 29th day of June, 1967, that George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz hereby appeal to the United States Court of Appeals for the District of Columbia from the final order of this Court entered on the 16th day of June, 1967, denying the foregoing parties leave to intervene in the above-captioned matter

/s/ Karl G Feissner
Attorney for Proposed Intervenors

[Filed July 10, 1967]

APPELLANT'S DESIGNATION OF RECORD

In accordance with the Notice of Appeal filed in this matter on June 29, 1967 on behalf of George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz, and the applicable provisions of Local Rule 12 of the United States Court of Appeals for the District of Columbia Circuit, the Appellants make the following designation of record to be transmitted to the Court of Appeals.

1. The Motion of the above-named parties to Intervene, together with Memorandum in support of that Motion, and Exhibits attached thereto, all of which were filed in this proceeding on January 23, 1967.

2. The Opposition of creditors to the Motion to Intervene filed in this proceeding on January 23, 1967.

3. The Motion of the alleged bankrupt to dismiss the Motion to Intervene, with Memorandum of Points and Authorities, filed in this proceeding on January 23, 1967.

4. The Order of the Referee denying Motion to Intervene filed in this proceeding on January 23, 1967.

5. The Petition of the Intervenors for Order of Review, filed in this proceeding on February 17, 1967.

6. The Certificate of the Referee on the Petition for Review filed in this proceeding on February 17, 1967.

7. The Order of the United States District Court for the District of Columbia affirming the Order of the Referee denying the Motion to Intervene, filed in this proceeding on June 16, 1967.

8. The Notice of Appeal from the Order of the United States District Court, filed in this proceeding on June 29, 1967.

9. This Designation of Record.

/s/ William L. Kaplan
Attorney for Appellant-Intervenors

Of Counsel:
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1420 K Street, N. W.
Washington, D. C. 20005
RE 7-3740

BRIEF FOR APPELLEES

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,211

GEORGE PAPUCHIS, et al.,

Appellants,

v.

THE HONORABLE JOHN BRESNAHAN, et al.,

Appellees.

Appeal from the United States District Court
for the District of Columbia

EDWARD L. GENN
610 Colorado Building
1341 G Street, N. W.
Washington, D.C. 20005

Attorney for Appellees

COUNTERSTATEMENT OF QUESTION PRESENTED

The questions presented by this appeal are:

1. Were petitioners entitled to any rights of intervention in the involuntary bankruptcy proceedings at bar?

2. Did not the Referee in Bankruptcy and the Court below properly rule that the petitioners established no basis in law or fact for their personal intervention in the pending bankruptcy causes?

INDEX

TABLE OF AUTHORITIES

Cases

Other Authority

Statutes

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* Authorities upon which appellees chiefly rely are noted by asterisks.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,211

GEORGE PAPUCHIS, et al.

Appellants

v.

THE HONORABLE JOHN BRESNAHAN

Appellees

Appeal from the United States District Court
For the District of Columbia

BRIEF FOR APPELLEES

STATEMENT OF THE CASE

On October 14, 1966, an Involuntary Petition, filed by three creditors of J & P Distributors, Inc., was referred to the Bankruptcy Court with a prayer that J & P Distributors, Inc. (hereinafter called "J & P") be adjudged a bankrupt (J.A. 30).

While the formal filing dates noted on the docket entries differ from the filing dates noted in the Bankruptcy Court (J.A. 1), it appears that appellants filed a paper denominated Motion to Intervene with Exhibits and a Memorandum in Support of a Motion to Intervene (J.A. 2-4). Appellants filed no separate verified petition. They sought no more than to "intervene" in the pending proceedings brought by the three petitioning creditors (Apollo Thermo Products, Inc., Robins Paper and R. V. Golden & Co.) (J.A. 2-4). In their unverified "Memorandum", appellants Papuchis, et. al. alleged, among other matters, that they were parties to four separate suits assertedly involving "J & P" and one John Nevros, a purported or alleged alter ego of the corporation (J.A. 3).

They asserted their basis for intervention with this statement: ". . . if (we) are granted leave to intervene in this matter, (we) are confident that (we) can demonstrate to the satisfaction of the Court that Mr. Nevros wilfully and fraudulently schemed and manipulated the operation of J & P Distributors, Inc. in such a manner as to wrongfully rape the corporation of virtually all of its assets for his own personal gain." (J.A. 3)

Motions to Dismiss the Motion to Intervene were filed both by the petitioning creditors and the alleged bankrupt (J.A. 19-21).

After hearing on January 10, 1967, the Referee in Bankruptcy denied the Motion to Intervene (J.A. 26-27). Appellants petitioned for review (J.A. 28). The Referee filed his Certificate noting, among other points, that J & P Distributors, Inc. was adjudged a bankrupt on January 26, 1967. (J.A. 30). The District Court affirmed the Order of the Referee denying intervention (J.A. 31). This appeal followed.

On March 14, 1967, some three months before the ruling of the District Court, Roger M. Whelan was appointed and qualified as Trustee in Bankruptcy of J & P Distributors, Inc. He has carried on the duties and functions of that position to this date.

COUNTERSTATEMENT OF POINTS

1. Appellants presented no basis for intervention because they did not hold the status of persons permitted to intervene.

2. Appellants were not entitled to intervene because they never asserted what was the only basis upon which a "right" to intervene might have been allowable, namely, to support the Petition and to make up for any defect in number of creditors necessary for adjudication.

3. Since the Court specifically adjudicated J & P Distributors a bankrupt, all alleged rights of intervention ceased on that date and their contentions then became moot.

SUMMARY OF ARGUMENT

The appellees urge in their argument that appellants Papuchis, et. al. do not fall in the category of creditors of J & P and thus entitled to the limited intervention rights afforded by the Bankruptcy Act. Even more clearly, it is suggested that the two sections of the Bankruptcy Act upon which appellants rely (11 U.S.C. 95(f) and § 607) do not support their position for these reasons: Sec. 607 relates solely to corporate reorganizations, a proceeding in no way involved at bar. Sec. 95(f) is a very limited intervention section, granting a "right" to creditors to intervene when, and only when, they seek to <u>support</u> an adjudication of bankruptcy and to "join in" the Involuntary Petition of other creditors. This is allowed when the creditor either alleges further "acts of bankruptcy" warranting an adjudication of the alleged bankrupt (J & P), or where there are an insufficient number of creditors with provable claims on the original Petition. The law requires that the Involuntary Petition be filed by a minimum of three (3) such petitioning creditors when the debtor has twelve or more creditors in all; it requires only one (1) petitioning creditor if the debtor has less than twelve creditors. In the instance at bar, the law being fulfilled and neither the appellants nor any one else disputing the number of petitioning creditors involved, there was no basis for intervention.

Finally, it is noted, even if we search out among the unverified Memoranda for some ground upon which to grant this limited form of intervention (or "joining in" on the Involuntary Petition), the whole point becomes utterly

mooted by the undisputed adjudication of "J & P" as a bankrupt on January 26, 1967. In short, no alleged right of creditor to intervene under the Bankruptcy Act survives an adjudication of bankruptcy. When that occurred on January 26, 1967, whatever purported claim appellants had, then ended, both in purpose and in law.

ARGUMENT

Appellants' argument for its right to intervene in this case is without any support whatsoever. It rests upon gross misconceptions of what the Bankruptcy Act is all about. It extracts a phrase or statute wholly out of context. It puts "meaning" into the language of a case that is not in the case at all. It relies on points that are irrelevant to the issue.

Let us examine whether or not the appellants' position is as bereft of support as the foregoing statement asserts.

Appellants' Brief suggests this: ". . . they should have been granted leave to intervene in their status as stockholders, (based) upon 11 U.S.C. Sec. 607, which states that the '. . . judge may for cause shown permit a party in interest to intervene generally or with respect to any specified manner.'" (Appellants' Brief, p.5)

Appellants fail to cite the full section, or even that portion of the Bankruptcy Act to which the provision applies. If they did so, they would observe that this provision applies only to corporate reorganizations. This

section is not even remotely related to an involuntary "straight" bankruptcy. The Chapters are different; the proceedings are different; the law is different; the issues are different. Even apart from its admittedly discretionary provisions for "intervention", 11 U.S.C. 607 is a section dealing only with shareholders, indenture holders and others in specialized reorganization proceedings. See 6A Colliers on Bankruptcy 1964, p.320. Plainly it has not the slightest application at bar.

Appellant primarily rests his case on Title 11 U.S.C. Sec. 95(f)). We have set forth that entire statute in an appendix to this Brief because of its length. 11 U.S.C. 95(f) is actually Section 59(f) of the Bankruptcy Act.

The title of the Section is "Who May File and Dismiss Petitions".

95 (b) provides that three or more creditors of a certain kind may file an involuntary petition, but that where there are "less than twelve" creditors of the debtor in all, only one creditor of $500.00 or more is necessary to have the debtor adjudicated a bankrupt involuntarily.

Sec. 95(d) provides for what may occur when it is claimed by the bankrupt that less than a sufficient number of creditors is on the petition.

Sec. 95(e) provides who is included as creditors for the purpose of determining how many creditors (i.e., one, or three or more) must be on the Involuntary Petition.

Sec. 96(f) then provides that "creditors other than the original petitioners may at any time enter their appearance and join in the petition". (Emphasis added.)

What is the meaning of Sec. 59(f) (11 U.S.C. 95(f))?

No fuller description of its purpose and scope can be found than in the following excerpt from the leading text, citing appropriate authorities:

> "Section 59f permits creditors to intervene in support of the petition and thus prevent the dismissal by the court where it is shown that one of the several petitioners is disqualified from joining in the petition, or that his claim does not meet the requirements of § 59b. Intervention under § 59f may also prove useful to the creditors cause where a petition is filed by one creditor on the assumption that the bankrupt's creditors are less than twelve, and the bankrupt shows that he has twelve or more creditors and, therefore, at least three creditors must join in the petition. Furthermore, creditors having filed a petition may wish to withdraw and have the petition dismissed. Under such circumstances, the non-petitioning creditors are entitled to notice under § 59g so that they may intervene under § 59f and carry on the proceedings." 3 Collier's on Bankruptcy (14th Ed.) Sec. 59.28, p.644.

In short, 59(f) is by no means an unlimited intervention statute.

Appellants argue for a broad scope under 59(f), ignoring the language just cited, and indeed ignoring the very title of the section itself. That title alone demonstrates that 59(f) deals only with who may "file" petitions, not who shall administer the estate.

Appellants' position finally rests on three cases cited in their brief: In re Acord Ventilating Company (C.A. 7), 221 F.2d 899 (1955), Syracuse Engineering v. Haight (C.A. 2), 110 F.2d 468 (1940), and Providence Box & Lumber Co. v. Goodrich (D.C. Vt.), 80 F. Supp. 61 (1948).

They add nothing.

In re Acord Ventilating, supra, in fact supports the appellees' point

regarding the limited scope of 59(f); there, one creditor filed the involuntary petition; as it turned out, three creditors should have done so. The Court held that other creditors seeking intervention had a "right" to intervene in order to avoid dismissal of the petitions.

In Providence Box, supra, the same situation prevailed, less than three creditors signing the Petition. The Court observed that in such cases intervention to join in the petition is a matter of right. It noted at p. 63:

> "These sections permit creditors to intervene in support of the petition and thus prevent the dismissal by the court where it is shown that one of the several petitioners is disqualified from joining in the petition or that his claim does not meet the requirements of section 59, sub. b. Intervention under section 59, sub. f is also permitted where a petition is filed by less than three creditors on the assumption that the bankrupt's creditors are less than twelve, and the bankrupt shows that he has twelve or more creditors and, therefore, at least three creditors must join in the petition."

Syracuse Engineering Co., supra, the final authority upon which appellants rely, has dicta to the same effect.

In short, whatever "right" of intervention exists in the Bankruptcy Act, it is there solely to preserve the Petition. See Matter of Carden (C.A. 2), 118 F.2d 677 (1941).

Collier's on Bankruptcy notes the point when it considers the effect of certain changes in the Act. That text observes this:

> "Under former § 59f, as enacted by the Act of 1898, creditors were also allowed to intervene and join in the petition "or file an answer and be heard in opposition to the prayer of the petition." This latter clause was properly eliminated by the Act of 1938, since under § 18b as amended by the same Act, creditors may no longer contest an involuntary petition. The right of a creditor under § 59f is at present limited only to intervention in support of the petition." 3 Collier's on Bankruptcy (14th Ed.), Sec. 59.27, p.643.

Plainly, therefore, no general right to intervene exists.

No statutory authority supports such a claimed right.

No case has been cited to sustain such a claim.

Nothing has been shown by way of allegation, pleading, text, statute, rule, or reason to warrant such intervention.

Indeed everything that "bankruptcy" means and intends is precisely to the contrary.

See, e.g., In re Dandridge & Pugh, 209 Fed. 838, 839 (1913).

In short, appellants have indeed extracted phrases both from content and from context. It cannot be clearer than from the cases noted, even those cited by appellants, that no broad statutory right of intervention exists in bankruptcy at all.

The plainest reasons suggest themselves why this must be the case.

At least as it affects creditors, bankruptcy has one overriding purpose: the reasonably prompt, expeditious, and fair distribution of assets on a pro rata basis to all creditors in order of priority. See Hassen v. Jonas (C.A. 9) 373 F.2d 880 (1967). Once adjudication takes place, all estate causes of action and the duties to pursue them are left exclusively to the Trustee as the representative of both the bankrupt and all creditors. See United California Bank v. England (C.A. 9) 371 F.2d 667 (1966). The administration of the estate, as distinguished from the adjudication of the debtor, must have one hand to guide it.

In a recent statement of its intent, the Supreme Court noted that the

". . . chief purpose of the bankruptcy laws is 'to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period' ". See Katchen v. Landy, 382 U.S. 323, 328, 86 S. Ct. 467, 492.

No bankruptcy estate would ever be closed nor any bankrupt ever discharged from his debts, if each and every creditor could formally intervene in the administration of the estate.

No action could more readily defeat the purpose noted in Katchen v. Landy, supra, than the intervention of these appellants and all of the numerous creditors involved in the estate.

The entire matter at bar reduces to these specifics: Undisputedly three creditors in this case signed the involuntary petition. No contest resulted; J & P was adjudicated a bankrupt. Appellants never sought to "join in the petition" but only to intervene in the proceeding and in the administration of the estate (J.A. 2-4).

We might observe a further point noted below in the Memoranda submitted to the Referee in Bankruptcy (J.A. 19-25). It is urged there, and reaffirmed here, that appellants have not really shown their status as creditors of the bankrupt corporation; that if Mr. Nevros has committed a fraud on the bankrupt that right passes to the trustee and only he may assert it; that if Mr. Nevros committed a fraud on the appellants, the adjudication of J & P's bankruptcy (whether it be his alter ego or not) cannot affect their direct rights against him. Appellees reassert these points and suggest that the reasoning and the authorities supporting them are indisputable (J.A. 19-24).

It is surely incumbent on appellants to show precisely how and why they are not only entitled to intervention, but also they are prejudiced by any denial of intervention.

Are they suggesting that if they are in fact creditors of J & P -- a doubtful proposition at best -- they will receive a less pro rata share than other like parties?

Even if there were a clear statute injecting every creditor into the administration of every bankrupt estate, in lieu of a trustee in bankruptcy, how have these appellants been treated differently from all other like parties?

Finally, we conclude the matter with the plain observation that the "right" asserted -- if it ever could be said to exist -- expended itself on January 26, 1967, when J & P Distributors, Inc. was adjudicated a bankrupt (J.A. 30).

It was then that the Petition was formally sustained and J & P declared a bankrupt. Sec. 59(f) gives a creditor no more rights beyond that date.

In short, at the very least, on January 26, 1967, all rights of intervention, if at all, merged into the trustee to be appointed.

Mr. Roger Whelan, the Trustee in Bankruptcy,is not merely a collector. It is his duty to pursue any claim of fraud -- to inquire into any charge, to file any suit necessary -- not for these appellants, but for all creditors and for the estate itself. A summary of such duties, encompassing all the matters involved in this case can be found in Nadler, Law of Bankruptcy, 2nd Ed., Sec. 57, p. 48. See also United California Bank v. England, and Hassen v. Jones, supra this Brief, p. 9.

Those duties have been and are being fulfilled by Mr. Whelan.

Nothing in this record or the record below could or would show to the contrary.

The Referee's ruling was right.

The Court's affirmance of that Order was sound.

CONCLUSION

For the foregoing reasons, the ruling of the Referee in Bankruptcy and the Court below should be sustained and affirmed by this Court.

Respectfully submitted,

EDWARD L. GENN
610 Colorado Building
Washington, D. C. 20005
Attorney for Appellees

APPENDIX

§ 95. Who may file and dismiss petitions.

(a) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b) Three or more creditors who have provable claims fixed as to liability and liquidated as to amount against any person which amount in the aggregate in excess of the value of securities held by them, if any, to $500 or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

(c) Petitions shall be filed in triplicate, one copy for the clerk, one for service on the bankrupt, and one for the referee.

(d) If it be averred in the petition that the creditors of the bankrupt, computed as provided in subdivision e of this section, are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses and a brief statement of the nature of their claims and the amounts thereof, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that the parties in interest shall have an opportunity to be heard. If upon such hearing it shall appear that a sufficient number of qualified creditors have joined in such petition or, if prior to or during such hearing, a sufficient number of qualified creditors shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, there shall not be counted (1) such creditors as were employed by the bankrupt at the time of the filing of the petition; (2) creditors who are relatives of the bankrupt or, if the bankrupt is a corporation, creditors who are stockholders or members, officers or members of the board of directors or trustees or of other similar controlling bodies of such bankrupt corporation; (3) creditors who have participated,

directly or indirectly, in the act of bankruptcy charged in the petition; (4) secured creditors whose claims are fully secured; and (5) creditors who have received preferences, liens, or transfers void or voidable under this Title.

(f) Creditors other than the original petitions may at any time enter their appearance and join in the petition.

(g) A voluntary or involuntary petition shall not be dismissed upon the application of the petitioner or petitioners, or for want of prosecution, or by consent of parties, until after notice to the creditors as provided in section 94 of this title, and to that end the court shall, upon entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, shall cause such notice to be sent to the creditors of the pendency of such application and shall delay the hearing thereon for a reasonable time allow all creditors and parties in interest an opportunity to be heard. If the bankrupt shall fail to file such list within the time fixed by the court, such list may be filed by the petitioning creditors according to the best of their knowledge, information and belief: Provided, however, That in the case of a dismissal for failure to pay the costs of the bankruptcy proceedings, such notice of dismissal shall not be required.

BRIEF FOR APPELLANT
AND
JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,211

170

GEORGE PAPUCHIS, *et al.*,

Appellants,

v.

THE HONORABLE JOHN BRESNAHAN,
Referee in Bankruptcy, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

KARL G. FEISSNER
WILLIAM L. KAPLAN
ALPERN & FEISSNER
1420 K Street, N. W.
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Of Counsel:
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737-3740

QUESTIONS PRESENTED

The questions presented in this appeal are:

1. Whether the United States District Court for the District of Columbia erred in denying a stockholder, of an alleged bankrupt corporation leave to intervene in pending bankruptcy proceedings.

2. Whether the United States District Court for the District of Columbia erred in denying additional creditors leave to intervene in a pending bankruptcy proceeding.

INDEX

TABLE OF CASES

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*Cases or authorities chiefly relied upon are marked by asterisks.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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GEORGE PAPUCHIS, *et al.*,

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THE HONORABLE JOHN BRESNAHAN,
Referee in Bankruptcy, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is based upon 28 U.S. Code, Sec. 1291.

STATEMENT OF THE CASE

Proceedings were filed in the United States District Court for the District of Columbia, Bankruptcy, by three creditors of J & P Distributors, Inc., which proceedings sought to have the said J & P Distributors, Inc. declared bankrupt. The Appellants filed with the Referee in Bankruptcy their Motion to Intervene (App. 2), together with memorandum in support and exhibits attached thereto (App. 3-16). The memorandum in support of the Motion to Intervene stated that the moving parties (Appellants herein) were stockholders, former stockholders, or officers, former officers, former employees, and creditors of the corporation and one John Nevros who Appellants alleged was the alter ego of J & P Distributors, Inc., the alleged bankrupt. Both the creditors and the alleged bankrupt opposed the Motion of Appellants to Intervene in those proceedings (App. 19, 20). After hearing, the Referee in Bankruptcy entered an Order on January 12, 1967 (App. 26) denying the Motion to Intervene on the ground that the Appellants had "failed to establish a basis in law or in fact to support the said Motion to Intervene." (App. 27) Appellants petitioned for review of the Order of the Referee, and on June 16, 1967, the United States District Court for the District of Columbia entered an Order affirming the Order of the Referee (App. 31), from which this appeal is taken.

STATUTES INVOLVED

28 U.S.C., Section 1291.

Section 1291. Final decisions of district courts.

> "The Courts of Appeals shall have jurisdiction of appeals from all final decisions of the District Courts of the United States, the United States

District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

11 U.S.C., Section 95(f).

Section 95. Who may file and dismiss petitions.

"(f) Creditors other than the original petitioners may at any time enter their appearance and join in the petition."

11 U.S.C., Section 607.

Section 607. Intervention of parties; notices generally.

"The judge may for cause shown permit a party in interest to intervene generally or with respect to any specified matter. Except where otherwise provided in this chapter, the judge may from time to time enter orders designating the matters in respect to which, the persons to whom, and the form and manner in which notice shall be given."

STATEMENT OF POINTS

1. Under the facts presented in the proceedings below, the Referee in Bankruptcy should have granted leave for a stockholder of an alleged bankrupt to intervene in pending bankruptcy proceedings.

2. Under the facts presented in the proceedings below, the Referee in Bankruptcy should have granted leave to additional creditors to intervene in a pending bankruptcy proceeding.

SUMMARY OF ARGUMENT

The United States District Court for the District of Columbia erred in affirming the Order of the Referee denying the stockholder Appellants' Motion to Intervene, inasmuch as said intervention is authorized, upon a showing of cause, under the provisions of the Bankruptcy Act and other laws of the United States.

Additional error occurred when the United States District Court for the District of Columbia affirmed the Order of the Referee denying Appellant-creditors leave to intervene in the bankruptcy proceedings below, inasmuch as such intervention is a matter of right under the Bankruptcy Act and other laws of the United States.

ARGUMENT

The trial court and the Honorable Referee in Bankruptcy erred in denying a stockholder, and additional creditors of an alleged bankrupt corporation, leave to intervene in pending bankruptcy proceedings.

The basis of this appeal is the action of the United States District Court for the District of Columbia in affirming the Order of the Referee, denying your Appellants leave to intervene in a pending bankruptcy proceeding. Your Appellants, at the time their Motion to Intervene was filed, stood in the positions of stockholders and former stockholders, former officers, and current creditors of the alleged bankrupt. Appellants set forth the claim that the alleged bankrupt was, in fact, the alter ego of its controlling influence, one John Nevros. By their Motion, and exhibits attached thereto, Appellants proffered that their entrance into the proceedings, as parties, would protect the corporation, and themselves, by showing that "Mr. Nevros willfully and fraudulently schemed and manipulated the operation of J & P Distributors,

Inc., in such a manner as to wrongfully rape the corporation of virtually all its assets for his own personal gain." (App. 3) Such a proffer demonstrated that an adjudication of bankruptcy would work a wrongful result, and would adversely affect the interests of themselves and the corporation.

Appellants' position before the Referee, and the District Court, was adequately supported by law, and the denial of their Motion was prejudicial error. Rule 24a of the Federal Rules of Civil Procedure provides for intervention, *as a matter of right*, "(1) when a statute of the United States confers an unconditional right to intervene. . ." This Rule is to be liberally construed. *Knapp v. Hankins*, 106 F. Supp. 43 (D. C. Ill. 1952).

The statute authorizing such intervention is found at 11 U.S.C. §95(f), which states that "[c]reditors other than the original petitioners may at any time enter their appearance and join in the petition." Appellants contend that this authorizes their intervention under Rule 24a(1), F.R.C.P. This basis is found in the statement that ". . . the Act [11 U.S.C. §95(f)] provides that they may intervene at any time [and therefore], the right to do so is *not* limited by the court's discretion; *it is a matter of right*." *In Re Accord Ventilating Company*, 221 F.2d 899, 901 (7th Cir. 1955) [Emphasis added]. Further authority in support of this contention may be found in *Syracuse Engineering Co. v. Haight*, 110 F.2d 468 (2d Cir. 1940), and *Providence Box & Lumber Co. v. Goodrich-Daniell Lumber Corp.*, 80 F. Supp. 61 (D. C. Vt. 1948), both holding that intervention is a matter of right.

As to appellants' contention that they should have been granted leave to intervene in their status as stockholders, reliance is based upon 11 U.S.C. §607, which states that the ". . . judge may for cause shown permit a party in interest to intervene generally or with respect to any specified matter." While this section, unlike section 95(f), is

admittedly discretionary, Appellants contend that in view of the allegations presented in their Motion to Intervene, the court's denial of said Motion was an abuse of judicial discretion, and should be remedied by this Court. This is particularly true when one considers that Appellants are in the position of being the *only* stockholders of the corporation other than the alleged alter ego thereof, John Nevros.

CONCLUSION

In view of the foregoing, and for such other reasons as may be heard, Appellants move the Court to reverse the action of the United States District Court for the District of Columbia, and the action of the Honorable Referee, and to issue its mandate directing that your Appellants be granted leave to intervene in the bankruptcy proceedings, and that this intervention relate back to the filing of the original petition, without prejudice to the rights of the Appellants resulting from any action of the Referee subsequent to the filing of the Motion to Intervene.

Respectfully submitted,

KARL G. FEISSNER
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Washington, D. C. 20005
Attorneys for Appellants

Of Counsel:
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Washington, D. C. 20005
737-3740

JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Bankruptcy Court

FILE DATE
JANUARY 23, 1967

In the Matter of:	)	
J & P DISTRIBUTORS, INC.	)	Bankruptcy No. 67-66
Alleged Bankrupt	)	

* * *

RELEVANT DOCKET ENTRIES

* * *

Date	Proceedings
1967	
Jan. 23	Motion of George Papuchis, et al. to Intervene, Memo, Exhibits; c/m 12/15/66.
Jan. 23	Opposition of creditors to Motion to Intervene; c/m 12/22/66.
Jan. 23	Motion of Alleged Bankrupt to dismiss Motion to Intervene, P & A; c/m 12/22/66.
Jan. 23	Order of Referee denying Motion to Intervene.
Feb. 17	Petition of Intervenors for Order of Review; c/m 1/18/67.
Feb. 17	Certificate of Referee on Petition for Review; c/m 2/16/67.
June 16	Order Affirming Order of Referee denying the Motion of George Papuchis, et al., McGarraghy, J.
June 29	Notice of Appeal of George Papuchis, et al., of Order of June 16, 1967. Deposit by Feissner $5.00. Copies mailed to: Roger Whalen, John Bresnahan, Referee, and John A. Kendrick.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Bankruptcy Court

FILE DATE
JANUARY 23, 1967

In the Matter of:	)	
J & P DISTRIBUTORS, INC.,	)	Bankruptcy No. 67-66
Alleged Bankrupt	)	
	)	

MOTION TO INTERVENE

Come now George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz, hereinafter denominated as movants or intervenors, by and through their counsel, Karl G. Feissner, and in accordance with their Memorandum of Points and Authorities which is attached hereto and incorporated herein by reference, move the Court for leave to intervene in the above-captioned matter.

/s/ Karl G. Feissner
Attorney for Intervenors

Of Counsel:
ALPERN & FEISSNER
1420 K Street, N.W.
Washington, D. C. 20005
RE 7-3740

[Filed January 23, 1967]

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Come now the movants, by and through counsel, Karl G. Feissner, in support of their foregoing Motion, and in accordance with Rule 24 of the Federal Rules of Civil Procedure state as follows:

The movants are plaintiffs in four (4) separate and distinct actions against J & P Distributors, Inc., or John Nevros, the alter ego of J & P Distributors, Inc., or both, copies of which are attached hereto and incorporated herein by reference. Two (2) of these actions are now pending in the United States District Court for the District of Maryland, and two (2) are now pending before the Circuit Court for Montgomery County in Rockville, Maryland. The claims presented in these actions, many of which are interrelated, allege, in essence, that J & P Distributors, Inc. is but a tool for the fraudulent manipulations of John Nevros.

Movants, if they are granted leave to intervene in this matter, are confident that they can demonstrate to the satisfaction of the Court that Mr. Nevros willfully and fraudulently schemed and manipulated the operation of J & P Distributors, Inc., in such a manner as to wrongfully rape the corporation of virtually all of its assets for his own personal gain.

The movants are stockholders, former stockholders, officers, former officers and former employees of J & P Distributors, Inc., as well as being creditors of the corporation and creditors of Mr. Nevros. In these various capacities, your movants contend that they are allowed to intervene as a matter of right in accordance with the provisions of Rule 24 (a) (3) of the Federal Rules of Civil Procedure, inasmuch as their rights and claims will be adversely affected by a distribution or other disposition of the assets of J & P Distributors, Inc., if said corporation is, in fact, adjudicated bankrupt. As further support of this contention, movants cite the cases of Clark v. Sandusky, 205 F.2d 915 (7th Cir., 1953); Dowdy v. Hawfield, 88 U.S. App. D. C., 241, 189 F.2d 637 (1951), cert. denied 342 U.S. 830, 72 S. Ct. 54; and Northern Insurance Company of New York v. Grone, 126 F. Supp. 457 (D. C.

Pa., 1954), which cases hold that even though a petitioner may be able to assert rights in a separate action, leave to intervene will be granted where the one seeking intervention has an interest in the subject matter of such a nature that he will gain or lose by the operation of a judgment.

As further indication of the fact that J & P Distributors, Inc., is but the alter ego of John Nevros, your intervenors cite to the attention of the Court the fact that there are now pending in local Courts of Fairfax, Alexandria and Arlington, Virginia, over twelve (12) cases in which the plaintiff is Mary B. Nevros who is the wife of the said John Nevros. It should further be noted, for the attention of the Court, that the legal description of Mary B. Nevros in each of these cases is "Assignee of J & P Distributors, Inc.", and that twelve (12) of these cases are scheduled to proceed to judgment on the 19th, 20th and 21st of December, 1966.

In view of the foregoing Motion, Memorandum and exhibits attached thereto, and for such other reasons as may be heard, movants pray the Court for leave to intervene in this matter so that they may adequately protect their rights and claims.

Respectfully submitted,

/s/ Karl G. Feissner
Attorney for Intervenors

Of Counsel:
ALPERN & FEISSNER
1420 K Street, N. W.
Washington, D. C. 20005
RE 7-3740

[Certificate of Service]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore, Maryland

FILE DATE
JANUARY 23, 1967

GEORGE VAROUTSOS
2617 Wisconsin Avenue N. W.
Washington, D. C., and

JENNIE VAROUTSOS
2617 Wisconsin Avenue N. W.
Washington, D. C., and

LOUIS PAPPAS
6004 Columbia Pike
Falls Church, Virginia, and

JAN PAPPAS
6004 Columbia Pike
Falls Church, Virginia, and

CIVIL ACTION NO. 17794

WACLAW GILEWICZ
3850 Tunlaw Road N. W.
Washington, D. C., and

HANNA MARIE GILEWICZ
3850 Tunlaw Road N. W.
Washington, D.C.

Plaintiffs,

v.

JOHN NEVROS
1910 Franwall Avenue
Silver Spring, Maryland

Defendant.

COMPLAINT
(Breach of Contract)

1. This Court has jurisdiction by virtue of the fact that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs and diversity of citizenship.

2. The male plaintiffs were officers and stockholders of a corporation known as J & P Distributors, Inc., which corporation was duly organized in the State of Delaware and doing business in the District of Columbia at 2711 - 26th Street N.E.

3. During the time that male plaintiffs were officers of the above referred to corporation, they and the female plaintiffs signed as endorsers a bank note payable to the Arlington Trust Company, Incorporated, located in Arlington, Virginia.

4. On or about, to wit, March 1966, the male plaintiffs and the defendant entered into negotiations whereby the Defendant was to purchase from the male plaintiffs the stock and all other incidents of ownership of the corporation known as J & P Distributors, Inc.

5. During these negotiations and as one of the conditions of the sale of the corporation, the Defendant agreed with the plaintiffs to assume all debts of the corporation in which there was personal liability, including, but not limited to, the note referred to above in favor of the Arlington Trust Company.

6. On or about, to wit, April 1966, negotiations for the sale of stock and other incidents of ownership in the corporation were completed, at which time the defendant again agreed to assume all corporate debts in which there was any personal liability, including, but not limited to, the above referred to note.

7. Subsequent to the transfer of the corporation to the Defendant, the defendant made repeated promises to assume all liability on the above mentioned note, and all other corporate liabilities for which there was also personal liability.

8. Notwithstanding the many promises of the defendant, he has failed and refused to pay any amounts due on said note.

9. The amount due on said note presently is Ten Thousand Nine

Hundred Twenty-three Dollars and Fifty-three Cents ($10,923.53), plus interest and attorney's Fees.

WHEREFORE, plaintiffs claim judgment against the Defendant in the amount of Ten Thousand Nine Hundred Twenty-three Dollars and Fifty-three Cents ($10,923.53), plus interest thereon from April 4, 1966, costs, attorney's fees, and such other and further relief as the nature of the case may require, and which to the Court shall seem just and proper.

/s/ Karl G. Feissner
Attorney for Plaintiff

Of Counsel:
ALPERN & FEISSNER
11125 Rockville Pike
Rockville, Maryland
942-8200

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND
Rockville, Maryland

FILE DATE
DECEMBER 2, 1966

PERRY VAROUTSOS
11215 Gainsborough Road
Potomac, Maryland

and

EVELYN VAROUTSOS
11215 Gainborough Road
Potomac, Maryland

Plaintiffs,

vs.

JOHN NEVROS
Service of Process Upon:
Paul Q. Cuddy, Esq.
10400 Connecticut Avenue
Kensington, Maryland
Who Is Authorized to Accept
Such Service

Defendant.

LAW NO. 20477

DECLARATION
(Breach of Contract)

Come now the plaintiffs, by and through their attorney, Karl G. Feissner, and sue the defendant for that prior to March, 1966, the male plaintiff was an officer and stockholder of a corporation known as J & P Distributors, Inc., which corporation was duly organized in the State of Delaware and doing business in the District of Columbia at 2711 26th Street, N.E. During the time that the male plaintiff was an officer of the above-referred to corporation, he and the female plaintiff signed, as endorsers, a bank note payable to the Arlington Trust Company, Incorporated, located in Arlington, Virginia.

On or about, to wit, March, 1966, the male plaintiff and the defendant entered into negotiations whereby the defendant was to purchase from the male plaintiff the stock and all other incidents of ownership of the corporation known as J & P Distributors, Inc. During these negotiations, and as one of the conditions of the sale of the corporation, the defendant agreed with the plaintiffs to assume all debts of the corporation in which there was personal liability, including, but not limited to, the note referred to above in favor of the Arlington Trust Company.

On or about, to wit, April, 1966, negotiations for the sale of stock and other incidents of ownership in the corporation were completed, at which time the defendant again agreed to assume all corporate debts in which there was any personal liability, including, but not limited to, the above-referred to note. Subsequent to the transfer of the corporation to the defendant, the defendant made repeated promises to assume all liability on the above-mentioned note, and all other corporate liabilities for which there was also personal liability. Notwithstanding the many promises of the defendant, he has failed and refused to pay any amounts due on said note. The amount due on said note presently is Ten-Thousand Nine-Hundred Twenty-Three Dollars and Fifty-Three Cents ($10,923.53), plus interest and attorney's fees.

WHEREFORE, plaintiffs claim judgment against the defendant in the amount of Ten-Thousand Nine-Hundred Twenty-Three Dollars and Fifty-Three Cents ($10,923.53), plus interest thereon from April 4, 1966, costs, attorney's fees, and such other and further relief as the nature of the case may require and which to the Court shall seem just and proper.

/s/ Karl G. Feissner
Attorney for Plaintiffs

of Counsel:
ALPERN & FEISSNER
11125 Rockville Pike
Rockville, Maryland
942-8200

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore, Maryland

FILE DATE
NOVEMBER, 1966

LOUIS PAPPAS, Individually
and as Minority Shareholder
6004 Columbia Pike
Falls Church, Virginia

Plaintiff,

v.

JOHN NEVROS, Individually
and as Agent for
J & P DISTRIBUTORS, INC.
1910 Franwall Avenue
Silver Spring, Maryland

Defendants.

CIVIL ACTION NO. 17808

COMPLAINT
(Misrepresentation, Breach of Fiduciary Obligation, Injunction, Assault and Battery, etc.)

COUNT I

1. This Court has jurisdiction in that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, and diversity of citizenship.

2. Plaintiff is a fifteen percent (15%) shareholder in J & P Distributors, Inc. Defendant, John Nevros, is an eighty-five (85%) percent shareholder of the corporation and the President thereof.

3. The defendant corporation is a Delaware corporation whose principal place of business is located in Washington, D. C. and whose officers are at 2711 - 26th Street N. E.

4. Plaintiff was a fifteen percent (15%) shareholder at the time of all the incidents alleged in this complaint.

5. This action is not a collusive one in order to confer jurisdiction on the United States District Court of any action of which it would not otherwise have jurisdiction.

6. On or about August 18, 1966, plaintiff approached the President and eighty-five percent (85%) shareholder, John Nevros, and requested and accounting of the corporation's financial activities for the preceding four (4) months, and requested answers to numerous questions on the management and procedures of the corporation. The defendant, John Nevros, summarily refused to give any accounting or any answer to the questions. Further, he refused to take any action on behalf of the corporation to investigate alleged wrongdoings in connection with the corporation. Defendant Nevros gave his refusal to the plaintiff by striking him on the shoulder with a hammer and by threatening to kill him.

7. Plaintiff, in his capacity as a minority shareholder, seeks recovery on behalf of the corporation for numerous misdeeds on the part of the defendant John Nevros, to wit:

A. That defendant, John Nevros, has at all times since his acquisition of the controlling interest of said corporation operated said corporation entirely for his own personal profit and benefit without any regard whatsoever for the rights of any other shareholder.

B. That defendant, John Nevros, has operated the corporation as if it were entirely his own, and has failed to set up and elect a Board of Directors, has failed to call any shareholder meetings, has failed to account to any other interests in the corporation as to the transactions of the corporation.

C. That defendant Nevros has co-mingled the funds of the corporation with those of his own, has not kept adequate records of the transactions of the corporation, and has appropriated substantial

sum of money of the corporation to his own use.

D. That defendant Nevros has consistently sold the assets and the inventory of the corporation in bulk without the consent of any other interested parties of the corporation, and he has sold them at reduced prices and appropriated the proceeds to his own use.

E. That defendant, John Nevros, has prevented plaintiff from exercising his legal right of entry into the offices of the corporation by padlocking the entrances thereto.

F. That defendant, John Nevros, has flagrantly violated his fiduciary obligations to the corporation and its minority shareholder. He has continuously misused, mismanaged, squandered and appropriated substantial funds of the corporation, and has viciously and sometimes violently prevented any exercise of rights and privleges of the minority shareholder, Louis Pappas.

WHEREFORE, the plaintiff seeks to enjoin the exercise of any corporate powers on the part of the defendant, John Nevros, by appointing a receiver to handle the affairs of the corporation in the best interests of the corporation and all of its shareholders. Further, plaintiff demands recovery on behalf of the corporation in the amount of Seventy-Five Thousand Dollars ($75,000.00), the approximate amount of funds appropriated wrongfully from the corporation to the use of the defendant. Plaintiff also seeks reasonable allowance of counsel fees, costs, and any other just and equitable relief so which the Court deems him entitled.

COUNT II

1. This Court has jurisdiction in that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, and diversity of citizenship.

2. Defendant, John Nevros, is a resident of the State of Maryland and operates a business whose offices are located at 2711 - 26th Street N. E., Washington, D. C.

3. On or about March or April, 1966, defendant, John Nevros, bought an eighty-five percent (85%) interest in J & P Distributors, Inc. Up to that time, the plaintiff was a thirty percent (30%) shareholder and the sole and exclusive salesman for said corporation.

4. During and immediately following the time when defendant Nevros bought into the corporation, he continually made material and fradulent misrepresentations of existing facts and material and fraudulent misrepresentations of his existing state of mind to wit:

A. That he intended and would continue to pay plaintiff, Louis Pappas, a commission percentage that plaintiff has been earning up to that time.

B. That he intended to run the corporation for the benefit of all of its shareholders and employees.

C. That he intended to use the skills of plaintiff in furthering the success of the corporation.

D. That he would delegate managerial responsibility to said plaintiff by electing him to an officership and directorship of said corporation.

E. That he bought the said corporation as an investment in a successfully operating business.

5. Defendant, at the time he made the above statements, had no intention whatsoever to operate the corporation for the benefit of the corporation and its shareholders, but, instead, planned to appropriate the proceeds of the corporation for his own use. Defendant knew, at the time of the above statements, that the high liquidity and high cash flow of the corporation could be easily appropriated to his own use.

6. Defendant knew, at the time of the above statements, that he would not continue to pay any commission to plaintiff, that he would not delegate any managerial responsibility to plaintiff, and would not, in any way, allow plaintiff to examine the books of account.

7. Defendant, at the time of the representations above, intended to make plaintiff believe that he had a good and secure future with the corporation, and defendant intended plaintiff to rely on such respresentations. Defendant induced this reliance in order to have the advantages of the skills of plaintiff until such time as he had appropriated the funds of the corporation to his own use.

8. Plaintiff, in reliance on the representations above, remained in the employ of the corporation and retained a fifteen percent (15%) shareholder interest in the corporation.

9. Plaintiff has suffered damages because of the misrepresentations of the defendant in that he has been deprived of his weekly commissions for a period of four (4) months, has suffered substantial depreciation in the value of his stock, and has been deprived of any other opportunties to seek to employ his skills elsewhere.

WHEREFORE, plaintiff seeks judgment for such damages in the sum of Seventy-Five Thousand Dollars ($75,000.00), and punitive damages in the amount of Seventy-five Thousand Dollars ($75,000.00) as well as a reasonable allowance for counsel fees, costs, and any other just and equitable relief to which the Court deems him entitled.

COUNT III

1. This Court has jurisdiction in that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00) exclusive of interest and costs.

2. On or about August 18, 1966, defendant, John Nevros, while in a discussion with plaintiff on the practices of J & P Distributors, Inc., viciously, wantonly, maliciously and intentionally struck said plaintiff on the shoulder with a hammer and threatened to kill him. Defendant believed that the resulting blow to the plaintiff would be certain to follow from his act.

3. Plaintiff had not consented to any physical contact, whatsoever, with the defendant and, in fact, was surprised and alarmed at the reckless and malicious act of the defendant.

4. Plaintiff was physically injured by the defendant's act and suffered considerable apprehension and alarm by the threats to plaintiff's life.

WHEREFORE, plaintiff seeks judgment for said assault and battery in the amount of Ten Thousand Dollars ($10,000.00) compensation for injuries sustained from the physical injury, Ten Thousand Dollars ($10,000.00) compensation for the severe mental anguish and suffering caused by the defendant's striking as well as defendant's threats to plaintiff's life, and Ten Thousand Dollars ($10,000.00) punitive damages, together with reasonable counsel fees, costs, and any other just and equitable relief to which the Court deems him entitled.

/s/ Karl G. Feissner
Attorney for Plaintiffs

Of Counsel:
ALPERN & FEISSNER
1420 K St. N. W.
Washington, D. C. 20005
RE 7-3740

JURY DEMAND

Plaintiff demands Trial By Jury on all issues.

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND
ROCKVILLE, MARYLAND

FILE DATE
DECEMBER 13, 1966

GEORGE PAPUCHIS
10312 Conover Drive
Silver Spring, Maryland,

Plaintiff,

v.

JOHN NEVROS
Service of Process Upon:
Paul Q. Cuddy, Esquired,
10400 Connecticut Avenue
Kensington, Maryland

Defendant.

LAW NO. 20528

DECLARATION
(Fraud, Breach of Contract)

COUNT I

The Plaintiff, George Papuchis, through his attorney, Karl G. Feissner, sues the Defendant, John Nevros, for that, on or about, to wit, March 1966, the Defendant entered into negotiations with the Plaintiff with a view toward their joint management of a corporation to be acquired by the Defendant. During and prior to these negotiations, the Plaintiff was a professional business man carrying on a lucrative practice in the District of Columbia as a public accountant. The Defendant contracted with the Plaintiff to have the Plaintiff relinquish his private business and enter into a partnership with the defendant in the control of a corporation that the Defendant was presently negotiating to acquire. In return for Plaintiff's services, Defendant contracted to pay him a salary, to share in the profits of the corporation, and to convey to the Plaintiff Forty-Two and One-Half Percent (42-1/2%)

of the stock of the corporation which was to be acquired. That the representations and agreements of the Defendant were fraudulent in that the Defendant knew that they were false and knew at the time that he made them that he had no intention to fulfill his agreement; and that, on or about, to wit, the 30th day of April, 1966, the Plaintiff was discharged by the Defendant, and at no time was Plaintiff allowed to participate in any share of the profits of the newly acquired corporation. The Defendant's fraudulent misrepresentations have caused the Plaintiff severe damage, great mental and physical pain and suffering, and loss of income.

WHEREFORE, Plaintiff claims judgment against the Defendant in the sum of Seventy-Five Thousand Dollars ($75,000.00) compensatory damage, and Seventy-Five Thousand Dollars ($75,000.00) punitive damage, together with interest, costs and such other and further relief as the nature of the case may require, and which to the Court shall seem just and proper.

COUNT II

Incorporating by reference the pertinent allegations of Count I, the Plaintiff, George Papuchis, further alleges that the Defendant contracted with the Plaintiff to have the Plaintiff relinquish his private business and enter into a partnership with the Defendant in the control of a corporation which the Defendant was presently negotiating to acquire. In return for Plaintiff's services, Defendant contracted to pay him a salary, to share in the profits of the corporation, and to convey to the Plaintiff Forty-Two and One-Half Percent (42-1/2%) of the stock of the corporation which was to be acquired. The Plaintiff did, in fact, discontinue his own business as a public accountant and commenced work for the Defendant on or about, to wit, April 1966, and on or about, to wit, the 30th day of April 1966, the Defendant breached his contract with the Plaintiff by summarily discharging said Plaintiff, and, at no

time, did the Defendant convey any of the promised stock to the Plaintiff; and, at no time, was Plaintiff allowed to participate in any share of the profits of the newly acquired corporation. The Defendant's active breach of contract has caused the Plaintiff severe damage, great mental and physical pain and suffering, and loss of income.

WHEREFORE, Plaintiff claims judgment against the Defendant in the sum of Seventy-Five Thousand Dollars ($75,000.00) compensatory damage, and Seventy-Five Thousand Dollars ($75,000.00) punitive damage, together with interest, costs and such other further relief as the nature of the case may require, and which to this Court shall seem just and proper.

/s/ Karl G. Feissner
Attorney for Plaintiff

Of Counsel:
ALPERN & FESSINER
11125 Rockville Pike
Rockville, Maryland
942-8200

JURY DEMAND

Plaintiff demands trial by jury on all issues.

/s/ Karl G. Feissner
Attorney for Plaintiff

[Filed January 23, 1967]

OPPOSITION TO MOTION OF
GEORGE PAPUCHIS, ET AL TO INTERVENE

The petitioning creditors herein, Appollo Thermo Products, Inc., Robins Paper Co. and R. V. Golden & Co., by and through their attorneys below named, oppose the Motion to Intervene filed herein by George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz.

While it is true that Rule 24 (a) (3) of the Federal Rules of Civil Procedure applies in cases of intervention, this is merely procedural and does not control or govern the basic right of intervention. Since this is a proceeding under the Bankruptcy Act, authority for intervention must be provided therein. Insofar as the petitioning creditors herein have been able to determine, there is no such provision anywhere in the Bankruptcy Act.

Assuming but not conceding that the allegations set forth in the memorandum attached in support of the Motion to Intervene are true; nevertheless, intervention cannot and does not serve the intended purpose nor the apparent remedy being sought. If, in fact, assets of the alleged bankrupt have been improperly transferred to others, then this would be a matter for the Trustee when appointed to pursue by appropriate investigation and prosecution as may be indicated.

If Movants are creditors of the alleged bankrupt, then it would still not only be unnecessary but improper to permit intervention for there are presently three petitioning creditors which is the maximum number required under the provisions of the Bankruptcy Act in any bankruptcy case.

For the foregoing reasons, it is respectfully submitted that the Motion to Intervene should be dismissed.

/s/ Leon M. Shinberg
514 Washington Building
Washington, D. C. 20005

/s/ John A. Kendrick
233 Massachusetts Avenue, N.E.
Washington, D. C. 20002

Attorneys for Petitioners

[Certificate of Service]

[Filed January 23, 1967]

MOTION TO DISMISS MOTION TO INTERVENE

TO THE HONORABLE JOHN A. BRESNAHAN,
REFEREE IN BANKRUPTCY:

J & P DISTRIBUTORS, INC., the alleged bankrupt, by one of its counsel, Samuel M. Greenbaum, moves this court to dismiss the Motion to Intervene filed by George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz, and for grounds therefor respectfully represents:

1. This court lacks jurisdiction over the subject matter.

2. The Motion to Intervene fails to state a claim upon which can be granted.

3. The movants are not parties entitled to intervene in the above-captioned bankruptcy proceeding unless they are creditors, in which event said parties' participation in the proceeding would by filing a

formal proof of claim and not by Motion to Intervene.

4. The exhibits attached to the Motion to Intervene, consituting four Complaints filed by various of the movants, demonstrate that the claims of the movants are against John Nevros, an individual, or as agent for J & P Distributors, Inc., but show no claim asserted against J & P Distributors, Inc.

5. The said Motion to Intervene is not a proper or an appropriate pleading to be filed in the bankruptcy proceeding.

6. The said Motion to Intervene, if deemed a proper pleading, is anticipatory and not entitled to consideration in the present status of the proceeding.

7. The premise upon which said Motion to Intervene is based, as alleged in the Memorandum in Support of Motion to Intervene, appears essentially stated to be allegations that John Nevros, an individual, used the corporation for his own personal gain and to the detriment of creditors and others, and that the said corporation should be deemed the alter ego of John Nevros, which allegations, if substantiated, would constitute a cause of action by the Trustee in Bankruptcy in this proceeding, and not a cause of action inuring to the movants, and accordingly their motion is inappropriate and upon grounds which are not sustainable, nor would said grounds entitle intervenors to a right to intervene other than as creditors in the appropriate manner provided by the filing of a proof of claim in bankruptcy.

8. And for such other grounds as will be presented to this court at the time of the hearing upon the Motion to Intervene.

WHEREFORE, the premises considered, it is prayed that the Motion to Intervene filed herein be denied and dismissed with prejudice.

/s/ Samuel M. Greenbaum
Attorney for J & P
Distributors, Inc.

Samuel M. Greenbaum
Alan S. Kerxton

By /s/ Alan S. Kerxton
Attorney for J & P Distributors, Inc.
401 Tower Building
Washington, D. C. 20005
347-2626

Dimitri P. Mallios
Associated Counsel
Brawner Building
Washington, D. C. 20006
289-9100

[Certificate of Service]

[Filed January 23, 1967]

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS MOTION TO INTERVENE

The Motion to Intervene filed by the parties named who seek to intervene should be denied and dismissed with prejudice for grounds set forth in the Motion to Dismiss said Motion to Intervene, for reasons that:

1. The Bankruptcy Act provides the manner in which those asserting to be creditors should present their claims. (57 Bankruptcy Act: 11 U.S.C. 93).

2. Creditors seeking to intervene as petitioning creditors may do so under the provisions of the Bankruptcy Act (§59 f: 11 U.S.C. §95 f). However, movants do not appear to allege their status as creditors, but allege their status as " . . . plaintiffs in four (4) separate and distinct actions against J & P Distributors, Inc., or John Nevros, the alter ego of J & P Distributors, Inc., or both. . .." Reference to the attached Complaints filed does not disclose that J & P Distributors, Inc., the bankrupt, was named a defendant in any action, and all actions appear to be against John Nevros individually or, in one instance, against him as agent for J & P Distributors, Inc.

3. The Trustee in Bankruptcy succeeds to the title of the bankrupt to all property transferred by the bankrupt in fraud of creditors (§70a (4): 11 U.S.C. 110a (4) and also succeeds to all rights of action which the bankrupt could by any means have asserted) §70a (5): 11 U.S.C. 110a (5)), and to rights of action arising upon the unlawful taking or detention or injury to the bankrupt property (§70a (6): 11 U.S.C. 110a (6)). Accordingly, if, as alleged in the Memorandum in Support of Motion to Intervene, John Nevros has conducted the affairs of the corporation in the manner alleged, such right of action on behalf of the creditors exists in the Trustee in Bankruptcy upon the filing of the bankruptcy petition, if it is a right of action inuring to the bankrupt corporation, under the Trustee's powers under the Bankruptcy Act. Otherwise, if such right is not a right of action inuring to the Trustee, but a right of individual action by the moving creditors against John Nevros, there is no basis for undertaking to intervene in the bankruptcy proceeding by said movants.

4. One of the duties of the Trustee in Bankruptcy is inter alia to collect and reduce to money the property of the estate (Bankruptcy Act §47a: 11 U.S.C. 75a). Accordingly, if, as asserted by movants, there exists a cause of action in the bankrupt estate against Nevros, in which the movants' rights and claims would be adversely affected, movants would appear to be asserting claims as creditors against the bankrupt

corporation which appears contrary to the causes of action as evidenced by the Complaints filed against John Nevros individually.

5. Movants' position, as it appears in the Memorandum in Support of Motion to Intervene, appears to be premised on allegations which, if substantiated, would constitute a cause of action by the Trustee in Bankruptcy in which movants have no greater right or benefit than other creditors in the recovery resulting therefrom, based on the actions of John Nevros individually in which it is alleged that he personally benefited by his conduct and schemed and manipulated the operations of the bankrupt for his personal gain. If on the contrary, however, as appears in the Complaints attached to the Motion to Intervene as exhibits, the causes of action therein asserted are personal to the plaintiffs in said causes, against John Nevros individually, and if, therefore, they do not constitute causes of action which may be asserted by the Trustee in Bankruptcy, then for either reason movants should not be granted leave to intervene; in the first instances because they have no independent status as parties in interest or creditors, since they do not assert status as creditors of the bankrupt corporation and since the cause of action which they assert is one inuring to the Trustee in Bankruptcy; in the second instance because the claims they assert are personal unto themselves and do not constitute causes of action assertable by the Trustee in Bankruptcy and consequently there was no basis for said movants' effort to intervene in the bankruptcy proceeding.

6. Movants' Motion for leave to intervene is an inappropriate and improper pleading in this proceeding, for that movants are neither creditors of the bankrupt corporation nor does any pleading submitted by them demonstrate their status of a creditor in said proceeding, but on the contrary they claim, as the four Complaints attached as exhibits to the Motion demonstrate, damages against John Nevros individually. If movants in such status are granted leave to intervene, or even if movants can demonstrate that they are either creditors or parties in interest, if

they are granted leave to intervene, every other creditor or party alleged to be in interest could likewise move to intervene, asserting individual claims arising out of individual and various transactions, constituting a multiplicity of pleadings and proceedings inimical to the purport and express intent and provisions of the Bankruptcy Act and contrary to law, resulting in a delay in administration and interfering with the orderly procedure established under the provisions of the Bankruptcy Act.

7. The Motion to Intervene is an appropriate motion procedurally according to the Federal Rules of Civil Procedure, but lacks a substantive basis in law for its allowance. Although the Federal Rules of Civil Procedure are applicable in bankruptcy unless inconsistent therewith (General Order 37), the present Motion is both procedurally and substantively inappropriate for the foregoing reasons.

8. This court, as a court of bankruptcy, lacks jurisdiction to grant the relief prayed for in the four Complaints attached as exhibits to the Motion to Intervene, inasmuch as the relief prayed for appears personal to the intervenors, asserted personally against John Nevros and not against the corporation. Even if the relief prayed for was against the corporation, assuming it were named a defendant in said actions, nevertheless the Motion to Intervene would be inappropriate, and again it is reiterated: to the extent the claims were properly asserted against the corporation then said claimants are relegated to the position of creditors whose claims must be asserted according to the provisions of §57 of the Bankruptcy Act by the filing of proof of claim.

For the foregoing reasons the Motion to Intervene fails to state a claim in this proceeding upon which relief can be granted.

Accordingly, for the foregoing reasons, and other reasons which will be presented at the time of hearing, the Motion to Intervene should be denied and dismissed with prejudice.

Respectfully submitted,

Samuel M. Greenbaum
Alan S. Kerxton
Attorneys for J & P Distributors, Inc.

By /s/ Samuel M. Greenbaum

Samuel M. Greenbaum
Alan S. Kerxton
Attorneys for J & P Distributors, Inc.
401 Tower Building
Washington, D. C. 20005
347-2626

Dimitri P. Mallios
Associate Counsel
Brawner Building
Washington, D. C. 20006
289-9100

[Filed January 23, 1967]

ORDER DENYING MOTION TO INTERVENE

Upon consideration of the Motion to Intervene filed herein by George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz and of the Memorandum of Points and Authorities attached thereto, together with the exhibits referred to in said Memorandum and of the Opposition to said Motion filed herein by Apollo Thermo Products, Inc., Robins Paper Co. and R. V. Golden & Co., the petitioning Creditors, and of the Motion to Dismiss said Motion to Intervene filed herein by J & P Distributors, Inc., the alleged Bankrupt, together with the Points

and Authorities in Support of said Motion to Dismiss Motion to Intervene attached thereto, and upon further consideration of argument presented by counsel for all of the aforesaid parties in open Court at a hearing held on the 10th day of January 1967, and it appearing from all of the foregoing that Movants of the Motion to Intervene have failed to establish a basis in law or in fact to support the said Motion to Intervene; therefore, be it this 12th day of January 1967,

ORDERED that the aforesaid Motion to Intervene be and the same hereby is denied.

/s/ _____
REFEREE

I certify that I hand-delivered a copy of the foregoing Order to Karl G. Feissner this 11th day of January, 1967.

/s/ _____

[Filed February 17, 1967]

PETITION FOR REVIEW OF ORDER OF REFEREE

The proposed Intervenors in the Court below seek review in this Court of the action of the Referee in Bankruptcy in dismissing the proposed Intervenors' Motion to Dismiss the proposed Intervenors' Motion to Intervene. The Motion to Intervene, a copy of which is attached hereto and incorporated herein by reference contained allegations which show that some of the proposed Intervenors were creditors and one of the proposed Intervenors was a minority stockholder of the alleged bankrupt. It was further brought to the attention of the Referee in Bankruptcy that in fact the alleged bankrupt, J & P Distributors, Inc., may not be a corporation in existence at this time, and if it is, then it is the mere alter ego of an individual, John Nevros.

For these reasons, and in accordance with the Memorandum of Points and Authorities attached hereto and incorporated herein by reference, and for such other reasons that will be urged to the Court, the proposed Intervenors respectfully move this Court to overrule the Order of the Referee and to allow their intervention.

Respectfully submitted,

/s/
Karl G. Feissner, Attorney for Intervenors, George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz.

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MEMORANDUM OF POINTS AND AUTHORITIES

Title 11, U. S. Code Annotated, Sec. 607 (c); Title 11, U. S. Code Annotated, Sec. 95(f); Woods v. Deck, 112 F.2d 739 (9th Cir. 1940); McCune v. First National Trust & Savings, 109 F.2d 887 (9th Cir. 1940); Klein v. Nu-Way Shoe Co., 136 F.2d 986 (2nd Cir. 1943); Syracuse Engineering v. Haight, 110 F.2d 468 (2nd Cir. 1940); In Re Super Vent Window Co., 52 F. Supp. 356 (D. C. Fla. 1943); Rule 24(a)(3), Federal Rules of Civil Procedure.

1. Stockholders and minority shareholders should be entitled to participate in bankrupt proceedings where the effect of the proceedings may be to place their corporation into voluntary bankruptcy when it has been alleged that the corporation is, in fact, the alter ego of an individual, and has been manipulated by that individual so that the corporation, in fact, does not exist.

2. Purported consent of voluntary adjudication apparently entered into between the petitioning creditors and the corporation does not render moot an intervening petition by a minority stockholder.

3. The proposed intervening creditors' rights would be materially affected by a distribution or other disposition of the assets of J & P Distributors, Inc. if said corporation is in fact adjudged a bankrupt.

/s/ Karl G. Feissner

Of Counsel:
ALPERN & FEISSNER
1420 K Street, N. W.
Washington, D. C. 20005
RE 7-3740

[Certificate of Service]

[Filed February 17, 1967]

REFEREE'S CERTIFICATE ON PETITION FOR REVIEW

To the Honorable, the Judges of the United States District Court for the District of Columbia:

I, John A. Bresnahan, the Referee of said Court in Bankruptcy do hereby certify that the captioned case was referred to me on October 14, 1966 upon a Creditors' Petition to adjudge J & P Distributors, Inc., a bankrupt; that in the course of the proceedings in said cause before me, the following question arose pertinent to the said proceedings:

> Whether, prior to the hearing on the Creditors' Petition, George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz, should be permitted to intervene in this proceeding.

As set forth in my order dated January 12, 1967, I found that the Movants had failed to establish a basis in law or in fact to support their Motion to Intervene and denied the Motion.

(Note: On January 26, 1967, J & P Distributors, Inc., was adjudged a bankrupt.)

I do further certify:

1. Petition for Review of Order of Referee filed on January 18, 1967.
2. Order denying Motion to Intervene filed on January 12, 1967.
3. Motion to Dismiss Motion to Intervene filed by J & P Distributors, Inc., the alleged bankrupt on December 27, 1966.
4. Opposition to Motion of George Papuchis, et al to Intervene filed on December 22, 1966.
5. Motion to Intervene filed on December 19, 1966.

Dated: Washington, D. C., February 16, 1967.

Respectfully submitted,

/s/ John A. Bresnahan
Referee in Bankruptcy

[Filed June 16, 1967]

ORDER AFFIRMING ORDER OF REFEREE

Upon consideration of the Petition for Review of Order of Referee dated January 12, 1967, wherein the Motion to Intervene, filed by George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz was denied, and after hearing argument of counsel for petitioners in support thereof and counsel for J & P Distributors, Inc. and for the petitioning creditors in opposition thereto, and it appearing to the court that the Order of the Referee denying the Motion to Intervene is well established in fact and adequately supported in law; therefore, be it this 16th day of June 1967.

ORDERED that the aforementioned Order of the Referee denying the Motion of George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz to Intervene be and the same hereby is affirmed

/s/ McGarraghy, Judge

[Certificate of Service]

[Filed June 29, 1967]

NOTICE OF APPEAL

Notice is hereby given this 29th day of June, 1967, that George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz hereby appeal to the United States Court of Appeals for the District of Columbia from the final order of this Court entered on the 16th day of June, 1967, denying the foregoing parties leave to intervene in the above-captioned matter.

/s/ Karl G. Feissner
Attorney for Proposed Intervenors

[Filed July 10, 1967]

APPELLANT'S DESIGNATION OF RECORD

In accordance with the Notice of Appeal filed in this matter on June 29, 1967 on behalf of George Papuchis, Louis Pappas, Jan Pappas, Perry Varoutsos, Evelyn Varoutsos, George Varoutsos, Jennie Varoutsos, Waclaw Gilewicz and Hanna Marie Gilewicz, and the applicable provisions of Local Rule 12 of the United States Court of Appeals for the District of Columbia Circuit, the Appellants make the following designation of record to be transmitted to the Court of Appeals.

1. The Motion of the above-named parties to Intervene, together with Memorandum in support of that Motion, and Exhibits attached thereto, all of which were filed in this proceeding on January 23, 1967.

2. The Opposition of creditors to the Motion to Intervene filed in this proceeding on January 23, 1967.

3. The Motion of the alleged bankrupt to dismiss the Motion to Intervene, with Memorandum of Points and Authorities, filed in this proceeding on January 23, 1967.

4. The Order of the Referee denying Motion to Intervene filed in this proceeding on January 23, 1967.

5. The Petition of the Intervenors for Order of Review, filed in this proceeding on February 17, 1967.

6. The Certificate of the Referee on the Petition for Review filed in this proceeding on February 17, 1967.

7. The Order of the United States District Court for the District of Columbia affirming the Order of the Referee denying the Motion to Intervene, filed in this proceeding on June 16, 1967.

8. The Notice of Appeal from the Order of the United States District Court, filed in this proceeding on June 29, 1967.

9. This Designation of Record.

/s/ William L. Kaplan
Attorney for Appellant-Intervenors

Of Counsel:
ALPERN & FEISSNER
1420 K Street, N. W.
Washington, D. C. 20005
RE 7-3740

DCB-McG-HL
12/8/67
(3)

BRIEF FOR APPELLEES

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,211

GEORGE PAPUCHIS, et al.,

Appellants,

v.

THE HONORABLE JOHN BRESNAHAN, et al.,

Appellees.

Appeal from the United States District Court
for the District of Columbia

EDWARD L. GENN
610 Colorado Building
1341 G Street, N. W.
Washington, D.C. 20005

Attorney for Appellees

COUNTERSTATEMENT OF QUESTION PRESENTED

The questions presented by this appeal are:

1. Were petitioners entitled to any rights of intervention in the involuntary bankruptcy proceedings at bar?

2. Did not the Referee in Bankruptcy and the Court below properly rule that the petitioners established no basis in law or fact for their personal intervention in the pending bankruptcy causes?

INDEX

TABLE OF AUTHORITIES

* Authorities upon which appellees chiefly rely are noted by asterisks.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,211

GEORGE PAPUCHIS, et al.

Appellants

v.

THE HONORABLE JOHN BRESNAHAN

Appellees

Appeal from the United States District Court
For the District of Columbia

BRIEF FOR APPELLEES

STATEMENT OF THE CASE

On October 14, 1966, an Involuntary Petition, filed by three creditors of J & P Distributors, Inc., was referred to the Bankruptcy Court with a prayer that J & P Distributors, Inc. (hereinafter called "J & P") be adjudged a bankrupt (J.A. 30).

While the formal filing dates noted on the docket entries differ from the filing dates noted in the Bankruptcy Court (J.A. 1), it appears that appellants filed a paper denominated Motion to Intervene with Exhibits and a Memorandum in Support of a Motion to Intervene (J.A. 2-4). Appellants filed no separate verified petition. They sought no more than to "intervene" in the pending proceedings brought by the three petitioning creditors (Apollo Thermo Products, Inc., Robins Paper and R. V. Golden & Co.). (J.A. 2-4). In their unverified "Memorandum", appellants Papuchis, et. al. alleged, among other matters, that they were parties to four separate suits assertedly involving "J & P" and one John Nevros, a purported or alleged alter ego of the corporation (J.A. 3).

They asserted their basis for intervention with this statement: ". . . if (we) are granted leave to intervene in this matter, (we) are confident that (we) can demonstrate to the satisfaction of the Court that Mr. Nevros wilfully and fraudulently schemed and manipulated the operation of J & P Distributors, Inc. in such a manner as to wrongfully rape the corporation of virtually all of its assets for his own personal gain." (J.A. 3)

Motions to Dismiss the Motion to Intervene were filed both by the petitioning creditors and the alleged bankrupt (J.A. 19-21).

After hearing on January 10, 1967, the Referee in Bankruptcy denied the Motion to Intervene (J.A. 26-27). Appellants petitioned for review (J.A. 28). The Referee filed his Certificate noting, among other points, that J & P Distributors, Inc. was adjudged a bankrupt on January 26, 1967. (J.A. 30). The District Court affirmed the Order of the Referee denying intervention (J.A. 31). This appeal followed.

On March 14, 1967, some three months before the ruling of the District Court, Roger M. Whelan was appointed and qualified as Trustee in Bankruptcy of J & P Distributors, Inc. He has carried on the duties and functions of that position to this date.

COUNTERSTATEMENT OF POINTS

1. Appellants presented no basis for intervention because they did not hold the status of persons permitted to intervene.

2. Appellants were not entitled to intervene because they never asserted what was the only basis upon which a "right" to intervene might have been allowable, namely, to support the Petition and to make up for any defect in number of creditors necessary for adjudication.

3. Since the Court specifically adjudicated J & P Distributors a bankrupt, all alleged rights of intervention ceased on that date and their contentions then became moot.

SUMMARY OF ARGUMENT

The appellees urge in their argument that appellants Papuchis, et. al. do not fall in the category of creditors of J & P and thus entitled to the limited intervention rights afforded by the Bankruptcy Act. Even more clearly, it is suggested that the two sections of the Bankruptcy Act upon which appellants rely (11 U.S.C. 95(f) and § 607) do not support their position for these reasons: Sec. 607 relates solely to corporate reorganizations, a proceeding in no way involved at bar. Sec. 95(f) is a very limited intervention section, granting a "right" to creditors to intervene when, and only when, they seek to <u>support</u> an adjudication of bankruptcy and to "join in" the Involuntary Petition of other creditors. This is allowed when the creditor either alleges further "acts of bankruptcy" warranting an adjudication of the alleged bankrupt (J & P), or where there are an insufficient number of creditors with provable claims on the original Petition. The law requires that the Involuntary Petition be filed by a minimum of three (3) such petitioning creditors when the debtor has twelve or more creditors in all; it requires only one (1) petitioning creditor if the debtor has less than twelve creditors. In the instance at bar, the law being fulfilled and neither the appellants nor any one else disputing the number of petitioning creditors involved, there was no basis for intervention.

Finally, it is noted, even if we search out among the unverified Memoranda for some ground upon which to grant this limited form of intervention (or "joining in" on the Involuntary Petition), the whole point becomes utterly

mooted by the undisputed adjudication of "J & P" as a bankrupt on January 26, 1967. In short, no alleged right of creditor to intervene under the Bankruptcy Act survives an adjudication of bankruptcy. When that occurred on January 26, 1967, whatever purported claim appellants had, then ended, both in purpose and in law.

ARGUMENT

Appellants' argument for its right to intervene in this case is without any support whatsoever. It rests upon gross misconceptions of what the Bankruptcy Act is all about. It extracts a phrase or statute wholly out of context. It puts "meaning" into the language of a case that is not in the case at all. It relies on points that are irrelevant to the issue.

Let us examine whether or not the appellants' position is as bereft of support as the foregoing statement asserts.

Appellants' Brief suggests this: ". . . they should have been granted leave to intervene in their status as stockholders, (based) upon 11 U.S.C. Sec. 607, which states that the '. . . judge may for cause shown permit a party in interest to intervene generally or with respect to any specified manner.'" (Appellants' Brief, p.5)

Appellants fail to cite the full section, or even that portion of the Bankruptcy Act to which the provision applies. If they did so, they would observe that this provision applies only to corporate reorganizations. This

section is not even remotely related to an involuntary "straight" bankruptcy. The Chapters are different; the proceedings are different; the law is different; the issues are different. Even apart from its admittedly discretionary provisions for "intervention", 11 U.S.C. 607 is a section dealing only with shareholders, indenture holders and others in specialized reorganization proceedings. See 6A Colliers on Bankruptcy 1964, p.320. Plainly it has not the slightest application at bar.

Appellant primarily rests his case on Title 11 U.S.C. Sec. 95(f)). We have set forth that entire statute in an appendix to this Brief because of its length. 11 U.S.C. 95(f) is actually Section 59(f) of the Bankruptcy Act.

The title of the Section is "Who May File and Dismiss Petitions".

95 (b) provides that three or more creditors of a certain kind may file an involuntary petition, but that where there are "less than twelve" creditors of the debtor in all, only one creditor of $500.00 or more is necessary to have the debtor adjudicated a bankrupt involuntarily.

Sec. 95(d) provides for what may occur when it is claimed by the bankrupt that less than a sufficient number of creditors is on the petition.

Sec. 95(e) provides who is included as creditors for the purpose of determining how many creditors (i.e., one, or three or more) must be on the Involuntary Petition.

Sec. 96(f) then provides that "creditors other than the original petitioners may at any time enter their appearance and join in the petition". (Emphasis added.)

What is the meaning of Sec. 59(f) (11 U.S.C. 95(f))?

No fuller description of its purpose and scope can be found than in the following excerpt from the leading text, citing appropriate authorities:

> "Section 59f permits creditors to intervene in support of the petition and thus prevent the dismissal by the court where it is shown that one of the several petitioners is disqualified from joining in the petition, or that his claim does not meet the requirements of § 59b. Intervention under § 59f may also prove useful to the creditors cause where a petition is filed by one creditor on the assumption that the bankrupt's creditors are less than twelve, and the bankrupt shows that he has twelve or more creditors and, therefore, at least three creditors must join in the petition. Furthermore, creditors having filed a petition may wish to withdraw and have the petition dismissed. Under such circumstances, the non-petitioning creditors are entitled to notice under § 59g so that they may intervene under § 59f and carry on the proceedings." 3 Collier's on Bankruptcy (14th Ed.) Sec. 59.28, p.644.

In short, 59(f) is by no means an unlimited intervention statute.

Appellants argue for a broad scope under 59(f), ignoring the language just cited, and indeed ignoring the very title of the section itself. That title alone demonstrates that 59(f) deals only with who may "file" petitions, not who shall administer the estate.

Appellants' position finally rests on three cases cited in their brief: In re Acord Ventilating Company (C.A. 7), 221 F.2d 899 (1955), Syracuse Engineering v. Haight (C.A. 2), 110 F.2d 468 (1940), and Providence Box & Lumber Co. v. Goodrich (D.C. Vt.), 80 F. Supp. 61 (1948).

They add nothing.

In re Acord Ventilating, supra, in fact supports the appellees' point

regarding the limited scope of 59(f); there, one creditor filed the involuntary petition; as it turned out, three creditors should have done so. The Court held that other creditors seeking intervention had a "right" to intervene in order to avoid dismissal of the petitions.

In Providence Box, supra, the same situation prevailed, less than three creditors signing the Petition. The Court observed that in such cases intervention to join in the petition is a matter of right. It noted at p. 63:

> "These sections permit creditors to intervene in support of the petition and thus prevent the dismissal by the court where it is shown that one of the several petitioners is disqualified from joining in the petition or that his claim does not meet the requirements of section 59, sub. b. Intervention under section 59, sub. f is also permitted where a petition is filed by less than three creditors on the assumption that the bankrupt's creditors are less than twelve, and the bankrupt shows that he has twelve or more creditors and, therefore, at least three creditors must join in the petition."

Syracuse Engineering Co., supra, the final authority upon which appellants rely, has dicta to the same effect.

In short, whatever "right" of intervention exists in the Bankruptcy Act, it is there solely to preserve the Petition. See Matter of Carden (C.A. 2), 118 F.2d 677 (1941).

Collier's on Bankruptcy notes the point when it considers the effect of certain changes in the Act. That text observes this:

> "Under former § 59f, as enacted by the Act of 1898, creditors were also allowed to intervene and join in the petition "or file an answer and be heard in opposition to the prayer of the petition." This latter clause was properly eliminated by the Act of 1938, since under § 18b as amended by the same Act, creditors may no longer contest an involuntary petition. The right of a creditor under § 59f is at present limited only to intervention in support of the petition." 3 Collier's on Bankruptcy (14th Ed.), Sec. 59.27, p.643.

Plainly, therefore, no general right to intervene exists.

No statutory authority supports such a claimed right.

No case has been cited to sustain such a claim.

Nothing has been shown by way of allegation, pleading, text, statute, rule, or reason, to warrant such intervention.

Indeed everything that "bankruptcy" means and intends is precisely to the contrary.

See, e.g., In re Dandridge & Pugh, 209 Fed. 838, 839 (1913).

In short, appellants have indeed extracted phrases both from content and from context. It cannot be clearer than from the cases noted, even those cited by appellants, that no broad statutory right of intervention exists in bankruptcy at all.

The plainest reasons suggest themselves why this must be the case.

At least as it affects creditors, bankruptcy has one overriding purpose: the reasonably prompt, expeditious, and fair distribution of assets on a pro rata basis to all creditors in order of priority. See Hassen v. Jonas (C.A. 9) 373 F.2d 880 (1967). Once adjudication takes place, all estate causes of action and the duties to pursue them are left exclusively to the Trustee as the representative of both the bankrupt and all creditors. See United California Bank v. England (C.A. 9) 371 F.2d 667 (1966). The administration of the estate, as distinguished from the adjudication of the debtor, must have one hand to guide it.

In a recent statement of its intent, the Supreme Court noted that the

". . . chief purpose of the bankruptcy laws is 'to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period' ". See Katchen v. Landy, 382 U.S. 323, 328, 86 S. Ct. 467, 492.

No bankruptcy estate would ever be closed nor any bankrupt ever discharged from his debts, if each and every creditor could formally intervene in the administration of the estate.

No action could more readily defeat the purpose noted in Katchen v. Landy, supra, than the intervention of these appellants and all of the numerous creditors involved in the estate.

The entire matter at bar reduces to these specifics: Undisputedly three creditors in this case signed the involuntary petition. No contest resulted; J & P was adjudicated a bankrupt. Appellants never sought to "join in the petition" but only to intervene in the proceeding and in the administration of the estate (J.A. 2-4).

We might observe a further point noted below in the Memoranda submitted to the Referee in Bankruptcy (J.A. 19-25). It is urged there, and reaffirmed here, that appellants have not really shown their status as creditors of the bankrupt corporation; that if Mr. Nevros has committed a fraud on the bankrupt that right passes to the trustee and only he may assert it; that if Mr. Nevros committed a fraud on the appellants, the adjudication of J & P's bankruptcy (whether it be his alter ego or not) cannot affect their direct rights against him. Appellees reassert these points and suggest that the reasoning and the authorities supporting them are indisputable (J.A. 19-24).

It is surely incumbent on appellants to show precisely how and why they are not only entitled to intervention, but also they are prejudiced by any denial of intervention.

Are they suggesting that if they are in fact creditors of J & P -- a doubtful proposition at best -- they will receive a less pro rata share than other like parties?

Even if there were a clear statute injecting every creditor into the administration of every bankrupt estate, in lieu of a trustee in bankruptcy, how have these appellants been treated differently from all other like parties?

Finally, we conclude the matter with the plain observation that the "right" asserted -- if it ever could be said to exist -- expended itself on January 26, 1967, when J & P Distributors, Inc. was adjudicated a bankrupt (J.A. 30).

It was then that the Petition was formally sustained and J & P declared a bankrupt. Sec. 59(f) gives a creditor no more rights beyond that date.

In short, at the very least, on January 26, 1967, all rights of intervention, if at all, merged into the trustee to be appointed.

Mr. Roger Whelan, the Trustee in Bankruptcy,is not merely a collector. It is his duty to pursue any claim of fraud -- to inquire into any charge, to file any suit necessary -- not for these appellants, but for all creditors and for the estate itself. A summary of such duties, encompassing all the matters involved in this case can be found in Nadler, Law of Bankruptcy, 2nd Ed., Sec. 57, p. 48. See also United California Bank v. England, and Hassen v. Jones, supra this Brief, p. 9.

Those duties have been and are being fulfilled by Mr. Whelan.

Nothing in this record or the record below could or would show to the contrary.

The Referee's ruling was right.

The Court's affirmance of that Order was sound.

CONCLUSION

For the foregoing reasons, the ruling of the Referee in Bankruptcy and the Court below should be sustained and affirmed by this Court.

Respectfully submitted,

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APPENDIX

§ 95. Who may file and dismiss petitions.

(a) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b) Three or more creditors who have provable claims fixed as to liability and liquidated as to amount against any person which amount in the aggregate in excess of the value of securities held by them, if any, to $500 or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

(c) Petitions shall be filed in triplicate, one copy for the clerk, one for service on the bankrupt, and one for the referee.

(d) If it be averred in the petition that the creditors of the bankrupt, computed as provided in subdivision e of this section, are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses and a brief statement of the nature of their claims and the amounts thereof, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that the parties in interest shall have an opportunity to be heard. If upon such hearing it shall appear that a sufficient number of qualified creditors have joined in such petition or, if prior to or during such hearing, a sufficient number of qualified creditors shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, there shall not be counted (1) such creditors as were employed by the bankrupt at the time of the filing of the petition; (2) creditors who are relatives of the bankrupt or, if the bankrupt is a corporation, creditors who are stockholders or members, officers or members of the board of directors or trustees or of other similar controlling bodies of such bankrupt corporation; (3) creditors who have participated,

directly or indirectly, in the act of bankruptcy charged in the petition; (4) secured creditors whose claims are fully secured; and (5) creditors who have received preferences, liens, or transfers void or voidable under this Title.

(f) Creditors other than the original petitions may at any time enter their appearance and join in the petition.

(g) A voluntary or involuntary petition shall not be dismissed upon the application of the petitioner or petitioners, or for want of prosecution, or by consent of parties, until after notice to the creditors as provided in section 94 of this title, and to that end the court shall, upon entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, shall cause such notice to be sent to the creditors of the pendency of such application and shall delay the hearing thereon for a reasonable time allow all creditors and parties in interest an opportunity to be heard. If the bankrupt shall fail to file such list within the time fixed by the court, such list may be filed by the petitioning creditors according to the best of their knowledge, information and belief: Provided, however, That in the case of a dismissal for failure to pay the costs of the bankruptcy proceedings, such notice of dismissal shall not be required.